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The American Political Science Review

Vol. XXIV NOVEMBER, 1930 No. 4

THE PRAGMATIC APPROACH TO POLITICS[1]

GEORGE H. SABINE

Ohio State University

I

I have been asked to present for your discussion the pragmatic approach to political science, the reason being, as I suppose, that my business is the study of philosophy and pragmatism is a kind of philosophy. Now philosophy has special interests of its own and hardly ever offers anything that can be taken over ready-made into scientific work with any useful results; moreover, the discussion of methods at large hardly ever leads to much. A method is good for just what it does, and its uses must be apparent just in the science where it is used. I greatly doubt, therefore, whether any good would come of my talking to you about philosophic pragmatism, which is a name of rather indefinite meaning, signifying a group of scientific and philosophic tendencies rather than a systematic doctrine. It does stand roughly for a point of view, which has perhaps been stated most clearly by Professor John Dewey, and it is a fact that this point of view has acted as a sort of ferment outside philosophy, especially in economics and law, and seems likely to have a significant influence on these subjects, at least in America and during the next few years. What I mean to do, therefore, is to try to picture pragmatism in action, compressing into a single paragraph the

[1] A paper presented at the New Orleans meeting of the American Political Science Association, December, 1929.

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description of pragmatism as a point of view. To illustrate pragmatism in action, I have chosen some attempts to adopt this point of view in economics, particularly the work of Thorstein Veblen and Professor Wesley C. Mitchell, and also in the study of law, particularly the program put forward by Professors Walter Wheeler Cook and Herman Oliphant.

As a point of view, pragmatism may perhaps be most easily described as an effort to take fully to heart the lesson of evolution, first as it appeared in the work of Darwin, and then as a way of looking at all sorts of social phenomena. Darwin's work was epoch-making in the history of thought, because it was the first scientific achievement, on a vast scale, along the lines of a purely empirical method such as English philosophy from the days of Francis Bacon had loved to emphasize, namely, the ordering of a great mass of seemingly unrelated data without the clue of mathematics. But the results of evolution radically changed the pre-Darwinian picture of nature and of human thought. It suggested a process of endless change, without fixed ends, in which the course of change could be plotted only for limited intervals and in terms of causal relations having a rather limited span. It swept away the whole apparatus of fixed categories of explanation, such as the species of pre-Darwinian biology, and reduced the so-called self-evident truths and *a priori* principles upon which both science and philosophy had been supposed to rest to the level of "provisional" rules. And if one asked, "Provisional for what?," a generation that had learned of Darwin could only answer, "Provisional for human action." Thus it became natural to picture thought as a factor in behavior, significant for what it effectively does in modifying the habitual adaptation of men to the conditions of their life. Thus philosophic pragmatism may be said to stand like a tripod upon the three supports of empiricism, evolution, and the instrumentalism of thought in human behavior. It accepts control as the end of knowledge and the test of its efficacy, and therefore makes purpose an ineradicable part of all thinking. It acknowledges

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only an *ad hoc* test of truth, since thinking must succeed, if at all, only in terms of the problem that calls it forth; and it sees in logic, both deductive and inductive, only an apparatus by which solutions may be methodically tested. For Professor Dewey, at least, the center of thought lies in that act of creative imagination by which a new way of handling a difficulty is invented. To this extent, pragmatism is the very opposite of the more recent forms of mechanistic behaviorism. Whether these conclusions are philosophically sound, I do not care now to inquire. I am concerned only to ask what has happened in some cases where social scientists have chosen to proceed as if they were sound.

II

Here, as I believe, the work of the late Thorstein Veblen is, for the present at least, the most original and suggestive that has yet appeared. To attempt anything like an exposition of Veblen's theories is clearly out of the question.[2] The whole body of his writing is peculiarly difficult to summarize, and his conclusions on more specifically economic questions are not now to the point. What I wish to put before you is rather his conception of a social science, particularly economics, using this as an illustration of pragmatic method.

If the upshot of Veblen's work for economic theory were compressed into a very brief formula, it might be stated somewhat as follows. Economic behavior at any given time is determined chiefly by economic institutions; institutions are socialized habits, and undergo a continuous and cumulative process of evolutionary change. The object of economic theory is therefore to explain changes of behavior, and such changes result from the whole complex of forces, physical and social, which create new habits and therefore modify economic institutions. From this formula it is apparent that one key to economic theory is the psychological process by which habits are formed. This process, as Veblen finds it described in

[2] See the excellent analysis of Veblen's views in Paul Homan, *Contemporary Economic Thought* (1928), where references to Veblen's works are given.

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modern psychology, is a resultant of two factors: innate or instinctive patterns of reaction and the modification of these reactions by habituation in the concrete situations where men mature their native powers and bring them to forms of overt behavior. But the innate factor is practically unchangeable, while the strictly physical part of the environment changes slowly if at all. Consequently, the most changeable, and therefore for social evolution the most important, condition of habit-forming consists of the institutions of society itself. The evolution of economic institutions is therefore the second key to economic theory. To be sure, institutions in their psychological make-up are merely habits—such as ways of making goods, various kinds of knowledge and skill, standards of taste and well-being, ideas of property, and kinds of industrial or commercial organization—but they are none the less the most significant part of the environment in which each individual matures his actual behavior. This whole body of habits—habits of thought as well as of action—forms the stream of human culture or civilization. From Veblen's point of view, the explanation of economic behavior implies a study of economic institutions, operating in a material environment and upon a fixed apparatus of instinctive response, but undergoing constant change by the action of forces which bring about new modes of habituation.

The mass of accumulated and socialized habit is thoroughly evolutionary in its operation; that is, it is subject to continuous and cumulative changes due to the accretion of new elements of skill, new bodies of knowledge, new forms of taste, and new modes of organization. The stream of civilization has no end, and it has no single cause. Consequently, the condition in which it happens to find itself at any given date—the particular constellation of institutions and practices which happens to prevail—is no more normal than that which prevails at some other date. The only abiding fact is change, and change is a resultant of all the causal factors, physical, psychological, historical, and social, that operate in the given situation. There is

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no state of equilibrium, no balance of economic forces, which forms a standard or norm. Hence Veblen regards the efforts of economists to define such norms, for example, the conditions of a market in an ideally free state of competition, as a mere remnant left over from a pre-Darwinian notion of science. Types have no existence in society, any more than in nature, and classification is purely provisional; so conceived, it may serve the ends of evolutionary explanation, provided that the evolutionary change is the key to the classification. If the order is reversed—if some form of social life is set up as the "natural" or the normal or the right form, while the forms themselves are treated as mere variants or aberrations of the type—social theory moves in a world of unreal abstractions and mythological entities.

It follows that Veblen's conception of economic theory contains a large element of stark, historical fact. It is largely a study in life-histories, including the origin and evolution of economic institutions. It is therefore descriptive, as Veblen believes all scientific procedures to be, though not purely historical, since the object of the description is to disclose the significant factors, biological, psychological, and social, which may be called the causes of institutional change. In truth, Veblen's conception of science may be called ultra-Darwinian. In his desire to discredit the procedures of economic theory which he criticises, it is very likely true that he underestimates the part that postulation and deduction play in the exact physical sciences. Probably he would reply that postulation is useful in physics as a tool, but misleading in economics when it is not conceived as a tool. In the social sciences, at least, explanation is for Veblen largely a description of matter-of-fact sequences, with only a minimum of generalization. Anything like absolutely general principles or absolutely universal laws is out of the question. This was the phase of Veblen's work which seemed most confusing to his older contemporaries in economics. What he called theories seemed to them not to be theories at all, but history. Since they had no objection

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to history, especially when they were not asked to use it, they found it hard to see the reason for his rather bitter strictures on conventional economic theory. That the history and theory of institutions should occupy divided halves of the economic estate seemed simple and obvious.

Another disconcerting phase of what Veblen called economic theory was the fact that it cut squarely across all the traditional lines between the scientific specialties. Indeed, this really was a serious practical difficulty, for a theory in Veblen's sense called for a range of scholarship beyond the compass of any single mind. Veblen himself was a man of prodigious learning, whose reading had extended into many curious fields where the conventionally trained economist was quite unable to follow him. The background of all his thought was the biological theory of evolution, and his conception of the innate sources of behavior was biological or physiological. His theory of habituation and of its influence upon human motivation belonged to psychology. Much of what he wrote on the native endowments of races and the evolution of economic institutions belonged conventionally to anthropology. And he showed from time to time a wide knowledge of the history of trade and industry, to say nothing of his accurate understanding of existing practices and processes. Moreover, all this was by no means intended merely as a display of heterogeneous erudition. If Veblen's notions of economic theory were to be taken seriously, information from all these fields must be continuously used by the economist and amalgamated into his description of economic behavior.

It was Professor Wesley C. Mitchell who showed that Veblen's ideas of economic theory could be made to work in the investigation of a contemporary problem where no far-flung theory of economic evolution was required and where the subject-matter of the investigation was incontestably economic, even by conventional standards. This is the philosophic significance of his study of business cycles. The general body of ideas about economic science upon which Professor Mitchell has insisted is quite obviously derived from Dewey and Veb-

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len.[3] Thus he has argued, in agreement with Veblen, that the key to economic theory is the fact that it has to do with behavior, because this focuses attention upon economic institutions. Institutions in turn are the changeable factor in economic behavior, and cumulative change in economic institutions is the chief concern in a scientific economic theory. At the same time, Professor Mitchell has accepted much more clearly than Veblen ever did the instrumentalism of Dewey's theory of knowledge. Knowledge, he asserts, is desired mainly for purposes of control, and the interest in changing institutions is motivated by the desire to shape the evolution of economic life to fit the developing purposes of the race. "Whether economics is to us a subject of thrilling interest or a dismal pseudo-science depends upon ourselves. . . . . If we come [to it] thinking of man's long struggle to master his own fate, then the effort to solve economic problems seems a vital episode in human history. . . . . Seen in this perspective, economic speculation represents a stage in the growth of mind at which man's effort to understand and control nature becomes an effort to understand and control himself and his society."[4] But to Professor Mitchell the desire for control has connoted, far more than to Veblen or Dewey, the use of a statistical or quantitative method; for practical problems typically take the form: How much? How soon? How fast? The originality and the force of his great work on *Business Cycles* lies chiefly in the marshalling of statistical data to test the many plausible but insufficiently supported theories that had been offered for the phenomenon of alternating prosperity and depression.

The dependence of Professor Mitchell's work upon the body of Veblen's ideas, however, is neither so vague nor so general as the preceding paragraph suggests. The study of business cycles is a Veblenian theory quantified and brought to bear upon a specific institution of the existing business or-

[3] "The Prospects of Economics," in R. G. Tugwell, *The Trend of Economics* (1924), pp. 3 ff.

[4] *Ibid.*

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ganization. It deals with an institution—the system of prices in a money economy where the production of goods is a by-product of earning profits. Professor Mitchell's earliest work, on the greenbacks,[5] had dealt largely with a similar theme: the influence upon the production and consumption of goods, and indeed upon economic welfare generally, of such inexpert legislation as the Legal Tender Acts. Here was a creation of Congress, something therefore which did not belong to the industrial system as such, dealing only with the issue of money, which was commonly supposed to be merely circulating medium or a kind of token for real utilities, and yet the manipulation of the symbol produced far-reaching and quite unexpected consequences in the working of the industrial machine itself. The result is a sort of demonstration of institutional economics: the production of goods is really incidental to the institutions of a market in which money profits must be earned. Those who are familiar with Veblen will recognize in this a phase of the distinction upon which he was always insisting, i.e., between business enterprise and the industrial system. Moreover, the deduction is obvious that if Congress could interfere blunderingly, it might also legislate effectively, by intelligently chosen means, to bring about a socially desirable end.

The point of view of Professor Mitchell's later work on business cycles is an extension of his earlier work. It presumes that business cycles consist of very complex interactions between numerous economic processes, that historical studies must be combined with qualitative and quantitative analysis to explain these interactions, that business cycles are peculiar to a certain form of economic organization, and that the understanding of the institutions belonging to this kind of organization is therefore necessary in order to understand the cycles.[6] More specifically, in a scheme where economic activity depends upon profits, present or prospective, and

[5] *A History of the Greenbacks* (1903). See the essay on Mitchell in Paul Homan, *Contemporary Economic Thought* (1928).

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profits depend upon the spread of prices, production is itself dependent upon the price system, which is to be considered functionally as the means for controlling this economic process. "The system of prices is our mechanism for regulating the process of producing and distributing goods. Prices make possible the elaborate exchanges, and the consequent specialization and coöperation in production, which characterize the present age. . . . . They are the means by which all consumers in concert make known what goods the community wants and in what quantities; the signs which enable all business enterprises in concert to come as near as they do toward achieving a satisfactory allocation of productive energies amidst the million channels into which these energies might flow. . . . . Prices also render possible the rational control of economic activity by accounting. . . . . Most important of all for the present purpose, the margins between different prices within the system hold out that prospect of money profit which is the motive power that drives our business world."[7] Professor Mitchell's study of business cycles is essentially a study of the functioning of an economic institution, including its history, an analysis of it, if possible a prediction of its future working, looking toward its further control for ends to be decided in the light of possibilities and policies.

The results of the study are in accord with the evolutionary presumptions which he shares with Veblen. Nowhere does he find a "normal" condition of business which tends to reinstate itself as if it were a state of mechanical equilibrium.[8] Nothing is normal except change, and the only permanent feature of the change lies in the recurrence, in fairly regular order, of sequences or relations of events connected with the cycle of prosperity, recession, depression, and revival. Hence the theory gives but little importance to the "cause" of business cycles, because stating the question in that form sug-

[6] *Business Cycles: The Problem and Its Setting* (1927), p. x.
[7] *Ibid.*, p. 116.
[8] *Ibid.*, pp. 186 ff. Cf. Chap. V.

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gests that there is a normal state of affairs which is periodically upset by some factor of change. In truth, all the factors are changing continually and all are continually interacting with each other; any factor may figure at times as cause and at times as effect. What the theory undertakes to state, therefore, is the manner in which business cycles run their course. The cycles themselves are neither temporary nor occasional phenomena; they begin at no particular point and end at no point, but run together in a continuous motion picture. If they could be said to have any cause at all, it would be merely the structure of the institution in which they take place, namely, business enterprise, or the pursuit of profits, operating in a system where economic activity consists mainly in the earning of money incomes. In short, the theory illustrates Veblen's contention that the object of economics is to explain the cumulative changes in economic behavior within the limits set by some arrangement of institutionalized habits.

We may now sum up briefly the results reached by the pragmatic method in economics, at least so far as these results are illustrated by the work of Veblen and Professor Mitchell. The method consists typically in the amalgamation of history and analysis. By stressing the study of economic behavior as its subject-matter, and by conceiving behavior as a resultant of innate factors conditioned by habits, it makes economic institutions a main ground for economic explanation. Like Professor Dewey's instrumental theory of knowledge, pragmatic theory in economics stresses particular "situations" as forming a setting in which analysis must take place. The structure of our institutions at any specified time is, of course, purely an historical fact; it is explainable, if at all, solely in terms of cumulative change from pre-existing institutions moving under the stress of those factors which tend to modify habit in one direction or another. The method implies a decided restriction upon generalization, for no laws of an absolutely general nature can be discovered. Cyclical changes may appear within the working of an institution, and such a cycle

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may be reducible more or less to a pattern or type. To this extent, it might conceivably be possible to predict an event like a business depression, but only so long as the structure of the institution is not too much changed. A profound change in the institution would produce a new situation and thereby destroy the general ground upon which prediction had rested. If the progression to the new situation were made intentionally, it would have to be tentative and experimental, since the working of the old institutions would offer no certain means of predicting just what would happen in the new state of affairs. Here the pragmatic theory would claim only that methodical experimentation is surer procedure than fumbling or the mere drift of circumstance. But it could not pretend to offer any assurance that a hypothesis founded on past experience would infallibly work.

III

I wish now to turn for a moment to some projects for the use of pragmatic method in the study of law. I say "projects," for the results of such study are as yet less obvious than the plans. Here the method has not, as in economics, had the effect of emphasizing historical studies, or an institutional point of view, but rather the factor of control and an attitude of experimentation. It is not denied, but rather asserted, that purpose has always been an inescapable factor in determining what shall be enforced as law. What is stressed by legal pragmatists is that the adaptation of means to ends ought to be self-conscious and methodical, a recognized part of the jurist's problem. Thus, Professor Walter W. Cook has asserted that it is the "postulate" of a scientific study of law that laws are devices to regulate conduct and that their value depends upon the way they work in attaining desired ends. Hence a knowledge of the law includes a knowledge of the ends to be sought and the effective means of attaining them.[9]

The justification of this "postulate" is found by Professor

[9] "Scientific Method and the Law," 13 *Amer. Bar Assoc. Jour.* 303 ff. (1927).

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Cook in a rather general consideration of the methods of science. Trained as a physicist, he has sought to bring to the study of law conclusions about scientific method which have been framed by students of the more exact sciences. As everyone knows, relativity and the quantum theory have produced a great amount of speculation of this sort, and even a very considerable mass of popular literature on the subject. Undoubtedly the upshot of this speculation has been, at least in a rough sort of way, pragmatic.[10] More than ever before, scientists have become conscious of the influence of postulates, or what Henri Poincaré used to call "conventions." A statement of even the simplest scientific fact is now known to involve such postulates, even though, as often happens, one may be quite unconscious of what is being taken for granted. Moreover, it is now known that many postulates commonly used are conventional, in the sense that there is often a considerable range of choice between alternative postulates. It is as if we had a choice of scientific languages and might state a fact in French, or German, or English; the whole external form would be determined by the language chosen, and yet there is no natural inferiority of one language as against another. The use of a given convention is more a matter of convenience, or what we call rather vaguely scientific utility, than of necessity. The presumed necessity which was formerly supposed to belong to geometrical axioms turns out, therefore, to be familiarity or habit rather than real logical necessity.

Professor Cook and his colleague, Professor Herman Oliphant,[11] have undertaken to extend a similar dissolving analysis to the categories commonly used in legal reasoning. If a case comes before a court for decision, it must obviously be classified; it must be assimilated to some line of previous

[10] Cf. the theory of operational definition in P. W. Bridgman, *Logic of Modern Physics* (1927), pp. 3 ff.

[11] "A Return to Stare Decisis," 6 *Amer. Law School Rev.* 215 ff. (also in 14 *Amer. Bar Assoc. Jour.* 71 ff., 159 ff. 1928). Cf. the introduction to J. Rueff, *From the Physical to the Social Sciences* (1929).

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decisions and settled in accordance with the rule prevailing for cases believed to be essentially similar. The difficulty is that this conception of the "essentially similar" is a loose, and even a subjective, category. For cases at law, like everything else in nature, are similar in all sorts of ways, and which similarity we judge to be essential depends principally on what we intend to do with the classification after it is made. Thus Professor Oliphant has pointed out that, starting from any case at law, we may work back to various principles in the light of which it might be decided, and also that we can carry each of these classifications back to broader and broader generalizations. It is as if the case stood at the apex of several triangles whose bases grow broader the farther we go from the specific case in hand. Now the act of classification itself does not compel us to travel in one triangle rather than another, and does not determine how far we shall think it necessary to go. For example, a case may easily involve rules drawn from the principle of contract or from that of property. Neither is exclusively the right principle, and yet the decision may depend upon which we choose to take as giving us the "essential" features of the case.

What determines, then, which of the possible lines of classification is to be followed? The answer to this question brings us back to Professor Cook's postulate. The object of the law is to regulate conduct for some end, and the end sought is the only criterion by which to decide what similarities are essential and what are not. The ruling consideration in making the choice ought to be the desirability of the practical results which will actually follow. Consequently, the jurist ought not to try to escape the consideration of ends and the means of attaining them, but should make such matters consciously and overtly a part of his study of the law. As I understand Professors Cook and Oliphant, they mean to assert that some choice of public policy cannot practically be avoided by judges and students of the law. The objection is not that jurists fail to do this, but that they do it con-

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fusedly, or ignorantly, and therefore without a full sense of responsibility for what they are doing. By setting up the fiction that cases themselves contain the principles for their own classification, they really become the victims of their own preconceptions. There is no system of formal legal logic by which cases can validly be decided, and the pretense that decisions are made in this way merely encourages clandestine ways of making them.

Since, then, the study of law must include the adoption of social policies, this ought to be done as methodically and as intelligently as possible. It follows that a scientific study of the law must be built upon a knowledge of the actual structure and functioning of the social, economic, and political life of the people whose behavior the law aims to regulate. Accordingly, Professor Cook has argued that such knowledge must be made prerequisite to a scientific legal education and that it must be included in every scientific project of legal research. Effectively, the law is what it does. It does adjust, in some fashion, actual conflicts of interest; it does regulate, in one way or another, actual relations between persons in concrete situations; it does aid some projects and hinder others. It exists, so to speak, in the interstices of the social structure and regulates, more or less, all the exchanges between the elements of that structure. The law is not a body of abstract rules under which cases are formally subsumed. It is more truly a tissue of interacting elements of human behavior, beginning with the formulation of a rule by a legislature, continuing in the decision of a court and the consequent action of an official, and having its final incidence in the modified behavior of those for whom or against whom the law is enforced. All the direct and collateral effects of enforcement are as much a part of the law as the rule in terms of which a court chooses to couch its decisions. One means to such a realistic study of law, it is claimed, would be found in a reclassification of rules more directly in terms of the human relations affected. The traditional categories of the law, such as prop-

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erty, torts, contracts, result in throwing together under one rubric political relations, family relations, business relations, and many others, which from a human point of view are radically different. Some such reclassification, I believe, is being experimented with by the Columbia University Law School.

For Professors Cook and Oliphant, therefore, the pragmatic method in law means the strict adaptation of all logical operations, such as classification, generalization, and deduction, to the conscious use of the law as a means of social control. The kinds of conduct to be regulated and the nature of the regulation desired are to be made the determining factors in choosing the properties according to which cases shall be classified and the nature of the generalizations which the jurist shall draw from the cases studied. Classification, generalization, and deduction are not to be indulged in for their own sake. Such a limitation implies what Professor Oliphant has called "an attitude of objectivity and experimentation," as against the attitude of relying upon broad, legal principles. Both men, I think, would endorse the statement of Judge Cardozo that the jurist's attitude "must be one of compromise, of adjustment, of a pragmatic adaptation of means to ends, of the relativity of legal truths."[12] More especially, the pragmatic method here implies the study of law as a social science and relating it to the other social sciences, particularly economics and politics. For a knowledge of the actual interrelationships of human beings, of their actual behavior, and of the effects of their behavior, is necessary to that conscious and methodical choice of ends and means which the scientific study of law requires.

IV

I have described at some length some of the uses to which a pragmatic method has been put in economics and the study of law, because I believe that the value of discussing methods, if any, consists more in example than in precept. Analogy

[12] *Paradoxes of Legal Science* (1928), p. 81.

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may be a shaky form of inference, but nothing is commoner than for one science to be stimulated and enriched by the example of others. What the pragmatic method might lead to in political science can only be discovered by trying it, and no attempts at prophecy are likely to be worth much. At the same time, it seems only reasonable that I should try to bring the discussion down to some of the questions in which, as political scientists, we are all primarily interested. But please understand that I claim only to see as through a glass darkly.

Perhaps I may refer first to a couple of negations. It would be agreed, I suppose, that the pragmatic method is directly opposed to the type of formal legal studies which have issued in the theory of sovereignty and the juristic theory of the state. To accept the pragmatic point of view will necessarily mean that sovereignty is regarded as, at most, a passing phase of a certain type of political organization, and that its value would have to be assessed at just what legal system-making is worth in the total problem of controlling behavior by law. Without denying that it has a value for this purpose, we should certainly have to regard it as an incidental rather than a major aspect of law. One who used the pragmatic method would look in much the same way, I suppose, upon general speculations about the nature of the state as embodying the final end or purpose of the civilized community. In this case, however, we should note carefully that the pragmatist's skepticism would concern the state and not the use of a conception like purpose in political theory. That is to say, he would doubt whether in attaching purposes to the state you are not taking too large a lump to make the discussion really useful. Quite obviously, the pragmatist has to stand or fall with the proposition that every theory has a purpose somewhere behind it. If one suffers from a phobia for teleology, or believes that having a purpose is the same as "wishful thinking," it is clear that he ought to have nothing to do with pragmatism. On the other hand, if human institutions do have an element of purposefulness, and if purposes may,

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by taking thought, be made more, rather than less, effective, it is hard to see how a student of politics can avoid committing himself as to what purposes actually are involved in the working of this or that institution, what are the conditions for a successful pursuit of a purpose, or what will be the consequences of aiming at one purpose rather than another. What he obviously must not do is to confuse purposes with facts. As a matter of history, political theory has almost always included an element of criticism, and therefore an element of valuation; it is at least arguable that this has been the most useful function that political theory has performed. What the pragmatist contends for is that all the cards should be dealt on top of the table; in short, that a theorist ought to be as self-conscious and as methodical about purposes as about facts.

We have seen that the pragmatic method in economics and law has set up the hypothesis that these subjects are a part of the study of human behavior, and we have seen that it is impossible to differentiate clearly the spheres of economics and law from other parts of behavior, because there really is no sharp line of division. The same result will certainly follow the adoption of this point of view in political science. Institutions of all sorts are habits that have received a social sanction, and in respect to their effects upon conduct they work in much the same way as other habits. Behavior is not in fact departmentalized with anything approaching the sharpness of the lines we have been accustomed to draw between legal and moral, economic and political. These categories are merely traditions, perhaps we might even say stereotypes, which originated solely as somebody's effort to classify social phenomena. Even though they may have served a useful purpose, their validity never consisted in anything but their utility. They correspond to nothing that exists, and it is worth asking, at least, whether they are still useful. Human behavior is controlled in many ways, even for social purposes, and often it is a matter of accident whether a control gets stamped with the sign manual of the state. Everyone knows

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that the actual working of law and government is affected at every turn by customs, organizations, and social apparatus which are quite unknown to constitutional law. The truth is that our political institutions have no skin around them to separate them from other institutions, because the effective part of government is inside our own skins. The process of social dissection has to follow lines of connection wherever they lead; there is no other way to lay bare the actual nervous system even of what we call by the traditional name "political."

There is no escaping the fact that the pragmatic method will obscure, or perhaps extinguish, the traditional lines between the social sciences. We have seen that this was notably true with Veblen, and it is no less true for any form of what is called institutional economics. Is the study of the Legal Tender Acts history, or politics, or economics? Surely it needs no argument to show that there is no realistic way to approach any political question which is not also economic. Today, at least, the political and economic fabrics are knit together all along the line. In the past, governments have continually been involved in questions of ecclesiastical organization. Our notions of individual liberty and privacy are quite inseparable from the social and legal status of the family. Dip into politics where you like, and if you have set yourself the task of finding out how and why political institutions work, you will have to follow your clues across the borders of what we customarily call politics. And if, as Socrates said, you are determined to follow the argument wherever it leads, you will find yourself studying economics, or history, or psychology, or even ethics and theology. This is disagreeable in an age of specialization, but it is none the less true.

Undoubtedly this presents a difficulty; for the limitation of human capacity compels us to be specialists, whether this fits the facts or not. What the pragmatic method seems to drive us to, however, is not specialization along the traditional lines which were supposed to divide politics and economics

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and law, but rather to the isolation of relatively separable problems and an attack upon them along converging lines of economic, political, and legal study. Such problems a pragmatist would expect to be located by what Professor Dewey would call "tensions" that occur in the functioning of our social apparatus. The area that a study would have to cover would depend on what we found to be relevant to the problem under examination, but in almost any case it could hardly be exclusively political or exclusively economic. In order to state the problem clearly, historical studies would almost certainly be necessary, since certain elements of the situation would be a heritage of the past. The description of the total situation would probably have to include not only existing economic and legal and political practices, but also less tangible factors, such as prevailing prejudices and beliefs. Hypotheses looking to a solution would have to include estimates of possibilities in various directions, such as possible changes in the arts, new agencies of government, new laws, and the means both of articulating these to the existing structure and of enabling them to handle the troublesome situation.

As good an example as I know of such a pragmatic investigation is the study by Professors Hamilton and Wright of the bituminous coal industry.[13] Here factors are involved which belong to a wide range of sciences, some of them not even social. The physical supply of coal and its location belong to geology, though the amounts and the difficulty of getting it quite obviously affect the market in important ways. The mining of coal is an engineering operation which depends, among other things, on what Veblen used to call "the state of the industrial arts," but the actual engineering practices are important factors in determining at what prices coal can be profitably mined. Profits, however, depend not less upon capitalization, financing, wages, and the total state of the market, including especially the sorts of changes that are

[13] *The Case of Bituminous Coal* (1925); *Way of Order for Bituminous Coal* (1928).

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likely to take place in the market. The market, quite obviously, is a social institution rather than a natural phenomenon. It depends not only upon purchasing power, which involves the whole price system, but upon legal regulations, like the anti-trust laws, upon business and industrial practices without number. If, moreover, any change is to be made in the way the industry is conducted, a host of forces need to be considered. There is the state of the public mind, the existence of stereotypes like "private property" and "individual enterprise;" there are quite tangible differences of interest between producers, wage-earners, and the consuming public; there are political and legal instrumentalities which might be used to alter the situation, involving not only questions of practical workability but such questions as constitutionality. And, quite evidently, the nerve of the whole investigation lies in the question: What do we want the industry to do? What condition of it should we be inclined to accept as reasonably satisfactory? Unless you have some views on that subject, the whole affair is evidently a waste of time. I do not know whether anyone would call this kind of investigation political; it certainly is not very definitely economic; and it is not at all what lawyers would call legal. But it is quite impossible to do this sort of thing well without getting down to some of the actualities of political, economic, and legal institutions.

In truth, it is just this which I think may reasonably be claimed for the pragmatic approach to politics, namely, that it may force us to get down to actualities. That pragmatism is sound as a philosophical position, I think highly doubtful. That pragmatic methods will yield any considerable control over social forces, at least within the foreseeable future, I believe to be a utopian, though an honorable, hope. I do believe that functional studies of specific parts of our social apparatus, expressly with a view to discovering how they work and what they do in terms of concrete human results, is the best available method at the present time of inducing a strict realism in political theory. When I say realism, however, I

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wish to disclaim the ideal of pure factual description. In the present state of social knowledge, there is no way to define the objects of a functional study except in terms of ends, and no way to liberate imagination except by including the possibilities of social functioning as well as the actualities. Paradoxical though it may seem, I would offer you the thesis that realism is impossible except upon the basis of intelligent idealism, that seeing things as they are is never quite possible except by seeing them as they might be. For the pragmatic method I think it may be claimed that it offers a large degree of freedom from tradition, a deliverance from useless abstractions, and the possibility of harnessing logical operations—classification, deduction, and induction—to problems that will not let political theory get too far away from real situations. For the next dozen years or so, this seems to me to be the road by which we shall go farthest; beyond that length of time, I have no notion what political science ought to be doing.

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THE IMPERATIVE MANDATE IN THE SPANISH CORTES OF THE MIDDLE AGES

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A study of the beginnings of national representation inevitably brings to the surface details which in their time were part or parcel of mediæval practices. One cannot expect that these usages, even as connected with representative institutions, can be of concern in our more complex modern circumstances, since the Middle Ages had comparatively few and simple problems for legislative solution. In those days the questions of relationship between the administrative and the legislative, and between the local and the central or national, had not emerged clearly. Nevertheless, such details and questions are interesting as examples of mediæval theory and efficiency, and, moreover, some of them are not entirely devoid of connection with present-day difficulties.

The custom of making in advance a decision which was imposed by the electors upon their chosen representative, a custom known as the imperative mandate, was an important factor in early representative government. It was sound in legal theory,[1] and some of its practice will be seen in the pages

[1] According to ancient law, with its formalist character, judicial acts had to be performed by the interested person himself; but later the influence of certain cases in which it was possible to get away from strict formalism (for example, consensual contracts, such as marriage by proxy) made representation possible in law, and everyone could make his will known not only by a letter or a *nuncius* (a speaking letter), but also by a mandatory furnished with powers and instructions ample enough to qualify him as more that a simple *porte-parole*. By fiction, the mandatory was likened to a mere messenger, and his acts were regarded as those of the mandated person. The practice of representation, however, made its way slowly, and it was not unusual to doubt the validity of the act of the representative and to insist upon its being confirmed by the person represented. The necessity for this fiction was always likely to be present, and a remedy had to be found. When this principle was applied to a deputy to the assembly, he was regarded only as a *porte-parole* of his electors, with no powers of his own and under strict obligation to conform to the will of his constituents. J. Brissaud, *Manuel d'histoire de droit français*, 803, 1442-1443 (1903).

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which follow. Also, its connection is with that early stage in popular government in which the development of representative institutions corresponded somewhat to one phase of the present. I refer to what is apparently a need to ask from the electors themselves their opinion on large, general questions of principle—for example, in our time, the referendum in Germany on the adoption of the Young Plan.

There is, I take it, no serious criticism nowadays of the theory of representative institutions, nor adverse comparison of its advantages with those of direct democratic participation in popular government (in spite of numerous deviations in practice), although confidence in the representatives chosen has often been shown to have been misplaced. The following account of the imperative mandate need have no bearing on modern times, although it may conceivably possess some interest as an example of mediæval efficiency in dealing with the simple exigencies of the period.[2]

When the electors impose upon their representative a decision fixed in advance,[3] it is called an imperative mandate, and the person elected is rather a delegate, or an agent, who votes as instructed than a representative of his constituents who acts in accordance with his own best judgment. It will be remembered that Burke condemned this kind of "representation" in his famous speech to the electors of Bristol in 1774[4] on the ground that it would result in sacrificing the "unbiased opinion," "mature judgment," and "enlightened conscience" of the representative if he had to carry out blindly "authoritative instructions," especially when the latter were "contrary to the clearest conviction of his judgment and conscience." On the other hand, Burke emphasized the need of the representative's living "in the strictest union, the closest

[2] This study has been made from secondary materials and neither unprinted documents nor archives generally have been examined. Nevertheless, it is offered in the hope that the collection and presentation of its subject-matter in English may be not without value.

[3] M. Block, *Dictionnaire général de la politique*, II, 255 (1867).

[4] *Works* (London, 1823), III, 18 ff.

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correspondence, and the most unreserved communication with his constituents." The imperative mandate of the Middle Ages met Burke's objections by providing him that essential constant communion, and by supplying, in place of his undeveloped individual inclination and opinion, the concerted reason and judgment of the community, which, through having its interests to conserve, really existed in a degree unknown today. But an agent or delegate, and not a free representative, he certainly was.

A modern objection to the mandated representative is derived from the fact that the program of the present-day legislature is too complex for its issues to be covered by instructions, and that unforeseen contingencies always arise and have to be met. Hence, no set of instructions in advance could possibly be adequate. Yet it is true that in all probability every election is preceded by pledges, platforms, and professions of faith and belief by candidates and parties, although such pre-election promises fall short of the actual issues presented in a session. Such sketchiness is made inevitable by lack of time, interest, and foresight. The pre-election statements of the modern candidate might, nevertheless, be considered as an imperative mandate upon him, one which is imposed directly by himself or by his party, and to which he is morally bound. For promises unfulfilled and duties neglected beyond reason, the modern answer is a recall device or direct legislation, neither of which is a highly satisfactory check upon ill-behavior. The imperative mandate would be impracticable today, but as used in Catalonia it has some current interest and possibly a suggestion for the present.

Again, the collective vote or decision of a legislature usually represents a compromise of positions, which often has worth as a process of "give and take." Such a decision, valuable in itself, could not be provided in advance; an imperative mandate could only hinder. None the less, legislatures the world over do at present act occasionally upon some great, single question of national interest, and for these fundamental mat-

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ters, the imperative mandate of the past may well afford an answer as satisfactory as does the present-day popular referendum. The imperative mandate is thus not inconsistent with representative government; it was a help to development in Spain, and its safeguards might still be usable under special conditions in modern representative government.

Since the instructed delegate acted far more as a local agent than as a representative of the nation as a whole, the conception of national representation as distinct from sectional was lacking in the mandate. National representation in the modern sense did not exist in mediæval Spain, for at none of the assemblies of the Cortes were present representatives of anything like all of the cities; nor were all of the nobles or clergy convoked. The addition of the third estate to the nobles and the clergy brought an approximation to representative government. But it must be admitted that each procurator represented only the municipality which granted him his mandate and that he certainly did not feel himself a spokesman for more than his own community. The imperative mandate, therefore, as has been suggested, may not have greatly added to the true understanding of representation and of national legislative power, which were undoubtedly present in germ; but at the same time it did not retard their development.

The advent of the third estate in the determination of national affairs probably took place at an earlier date in Spain than elsewhere. There is evidence that the people of the Spanish cities were summoned by their rulers, for consultation if not for deliberation, during the second half of the twelfth century in Leon. This was due, first, to the king's need for other aid than that given him by the nobles in freeing the country from the Moors and, later, to the flourishing circumstances of the Spanish cities, which required recognition. The imperative mandate as given by these cities to their representatives varied in degree and in conditions: in Castile and Leon it was explicit and almost unchangeable; in

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Aragon, it was general and more easily modified; and in Catalonia it was as binding as in Castile, but more flexible in its provisions for constant consultation and advice. Accurate generalization always presents difficulties. This is peculiarly true in connection with mediæval Spain, for Spain was divided into separate and individualistic states; moreover, there was diversity as well even among the localities within each state; and circumstances and conditions produced great variety in Spanish institutions. Nevertheless, some general observations should be attempted before considering the specialized development in the three principal regions.

Perhaps the greatest single fact underlying the situation was that feudalism had a slighter hold in Spain than elsewhere in western Europe. There was lacking the complicated network of fiefs, or complete hierarchy from the lowest to the highest, that characterized a feudal state. Several essentials were not present—notably that relation between suzerain and vassal that meant thoroughly reciprocal duties and ties binding through the land as well as through the person. In Spain, these duties were chiefly personal. Hence, ownership of land did not carry with it dominant authority over the inhabitants, and this exemption became important in the Reconquest, when the king rewarded his helpers with grants of territory but did not, as a rule, include personal dominion over the inhabitants thereof. In other words, partial, or even complete, freedom from ties (other than to the king) was a familiar condition. This slight hindrance to fluidity of population influenced the building up of cities, especially in the regions that had to be restored after the devastations caused by Moorish occupation and later dispossession. But there were other important factors. Agriculture on barren and wasted land had become distasteful; concentration in towns had the further attraction of offering comparative safety from raids; lands reconquered from the Moors had to be peopled and cultivated under some protection and inducements in the way of privileges. Consequently, while the kings made many grants to

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the nobles who had aided them in recovering the lands, they kept the greater part within their own royal domain and founded on this territory free and independent cities, to be inhabited by all who would share in the new work, whether urged to it by mere restlessness, by zeal for greater activity and profit, or by the desire to escape from their feudal lords. The very act of coming to one of the cities on the king's domain was rewarded by freedom and greater rights, as well as by enfranchisement from feudal tributes and services.[5] The royal cities thus became collections of free men who were vassals of no other lord than the king; *fueros* were granted to them;[6] and as they grew and acquired sufficient importance to care for and defend their own borders and interests, their charters gave them more authority—in fact, all the privileges of internal government and administration.[7] In this constant progression toward organization and autonomy, the kings frequently aided by granting to the cities renewed confirmations of former privileges and additions of new powers as reward for support against the powerful nobility.

The eleventh century brought the rise of the municipality in Castile and Leon; the period of its regular and powerful development came in the second half of the twelfth; and from the beginning of the fourteenth century the prelude to its decline was evident in decreasing simplicity and democracy. In Aragon, the cities matured later. The thirteenth century found them increasingly prosperous, and in the middle of the fourteenth the third estate came into its own when the nobles had definitely to yield to the king. The founding of

[5] James the Conqueror's words in founding the royal city of Figueras were: "*Quien quiera que entrare a establecerse en Figueras sea libre y no deba redimirse del domino feudal.*" Cited by J. Pella y Forgas, *Historia del Ampurdán* (1883), 630.

[6] Briefly defined, the *fuero* was a general or a municipal charter, usually based on custom or common law.

[7] Some of the lay and ecclesiastical seigneurs also gave charters to populations on their lands which freed the people concerned from their feudal dominion. The royal cities were far more numerous and tended to have a unifying effect, whereas the seigneurial cities were diverse, as emanating from many lords.

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the *real villa* in Catalonia took place early in the twelfth century.[8]

When the cities in Spain had acquired enough autonomy and prosperity to enable them to constitute collectively a potential force, they were summoned to the assemblies of the king, nobles, and clergy, first for consultation and before long for deliberation. Admission to the Cortes gave them assured position as lever or balance in national affairs. Their decline showed itself in the choice of municipal officers. This was in effect a vicious circle in which autonomous cities, of greater prosperity because of the admission of their deputies to the national assembly, in turn caused the Cortes to become by their presence so real a power in national affairs that the king did not scruple to exert his wiles to gain control over it by meddling in the internal affairs of the cities themselves, and more particularly in the appointment of their deputies to the Cortes. The city then lost its importance, and the Cortes declined with it. The Castilian Cortes of the thirteenth and fourteenth centuries has been called the sum of all the *concejos*. Its prerogatives were secured both by means of and to the enrichment of the third estate, and the diminishing of the advantages of the one would bring down, *pari passu,* those of the other. Even the device of the imperative mandate, which attempted to keep constant the will of the *concejo* in the assembly of all, could no longer block the domination of centralizing royalty.[9]

[8] The third estate was at first of slight importance in Catalonia, but through the extraordinary development of commerce and industry it came to have preponderating influence. Barcelona very early was a sort of democratic republic which, from its geographical position, naturally turned to commerce, navigation, and industry, and its influence over the rest of Catalonia was great. Hence it led and guided all the other cities in matters of government as well as of economics, and this leadership made for unity and centralization in Catalonia. Pella y Forgas, *Historia del Ampurdán,* 634.

[9] I shall limit the explanation of terms to the municipality of Castile, but that will sufficiently make clear also the *universidad* of Aragon and of Catalonia. The word *concejo* is of very old use in Spain, and occurs synonymously and indiscriminately with the other words, *villa* and *ciudad,* but more for personifying the city, as comprised of its territory and inhabitants. The individuals forming the *concejo,* in turn, became the *vecinos* (inhabitants) of the city or town. In

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To the king belonged the right of assembling the Cortes. The letters of convocation designated the time and place of meeting, and, ordinarily, the purposes underlying the meeting. Between the imperative mandate and a convocation which stated why a Cortes was to meet there is an evident connection, and, furthermore, periodicity of assembling is concerned. When the electors were notified in advance of the matters upon which their representatives were to consult or to deliberate, the latter could be directed how to act, and their powers could be limited and defined with greater or less precision. On the other hand, when meetings of the assembly became the expected procedure, to be followed with some regularity because, for the most part, occasions were similar and needed similar action, the letters of convocation were naturally less explicit regarding the objects of the meeting. In the latter circumstances, the powers given had to be broader and more general, since the procurators sent by the municipalities could be less restrained by previous orders and thus would be more free to act unless the giving and receiving of instructions could be carried on con-

explaining the homage due to the king, the Second Partida stated that each *villa* should assemble its *concejo* "*á pregon ferido*" to choose men to swear for all, great and small, "*varones et mujeres, nacidos y por nacer.*" For the text, see *Las Siete Partidas* (Madrid, 1807), pt. 2, tit. xv, ley 5 (37). From this, Señor Gregorio Lopez, the editor, concluded that those who formed this assembly of inhabitants were only the *varones mayores,* fourteen years of age. Hence, the *concejo* at the end of the thirteenth century would comprise all the inhabitants fourteen years old who had full civil rights. So constituted, the *concejo* had a single entity of its own (*sola entitad*); it was a corporation aggregate. Eduardo de Hinojosa, *Estudios sobre la historia del derecho español, passim,* especially pp. 65-70 (1903).

Señor Colmeiro defined the *ayuntamiento* as "*la junta de vecinos presidios por el estado de la justicia para ordenar el gobierno de la cuidad;*" that is, the governing body. It made the municipal ordinances, based on custom and on the privileges granted to the *concejo* by the *fueros* and charters, and it usually named the officers of the *regimiento,* or administrative board, whose individual members were the *regidores.* The disorganizing change in these communities thus took place through the gradual dislocation in the *regimiento* of the proportion of persons not of their own choice. In general, see M. Colmeiro, *De la constitución y del gobierno de los reinos de Leon y Castilla* (1855), and particularly II, 164-171, for a statement of the usual municipal officers in Castile.

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temporaneously with the sessions of the Cortes. In Castile and Leon there was no provision for fixed meetings. The Cortes assembled when, in general, the presence of the nation was necessary for its authority or consent, especially in the imposition of new taxes or services.[10] But in Aragon and in Catalonia, by the end of the thirteenth century, there was periodicity, if not regularity, in the meetings of the Cortes.[11] The corresponding differences in the mandates given will be noticeable.

The use of the imperative mandate also affected the election of procurators. When the representative's power of decision and action was controlled by the municipality through the mandate given to him—that is, when the municipality was present at the Cortes in all but actuality—his person was of slight importance. It mattered comparatively little who was chosen, or by what method, merely in order to carry the municipality's decision to the Cortes. Elections were characterized by the same lack of uniformity that existed in the organization of the cities and towns and in their representation at the national

[10] It was at least customary that the Cortes should assemble at the death of one monarch to swear fidelity to the new ruler and for his coronation, to concur in the guardianship of a minor, and to consult in all serious and difficult circumstances of the kingdom. Colmeiro stated that the only legal limit to the absence of the Cortes in Castile was the need of paying every seven years the *moneda forera*, so that no more than five years could elapse before the voting of the necessary funds was required (*Curso*, I, 349). The Cortes of Palencia in 1313 imposed during the minority of Alfonso XI the obligation to call a Cortes at least once in two years. A. Sacristan y Martinez, *Municipalidades de Castilla y Leon*, 305 (1877).

[11] It is probable that before 1283 there was no fixed rule as to periodicity. The provision for annual meetings in the General Privilege of 1283 and in the Privileges of the Union was modified in 1307 for biennial meetings, and again renewed in 1348 and 1381. M. de Bofarull y Romaña, *Las antiguas Cortes*, 46 (1912). In Catalonia was granted in 1283 the right of regular assembling of the Cortes every year at whatever time seemed best, provided no just reason prevented it. This was reiterated in 1292, and in 1300 a definite day for assembling was appointed, the first Sunday in Lent. The following year, however, the rule was again changed, to provide for meetings only every three years, except in case of emergency. V. Belaguer, *Estudios historicos y politicos*, 284-285 (1876); J. Coroleu y J. Pella y Forgas, *Las Cortes Catalanas*, 35 (1876), *Los Fueros de Cataluña*, 524, 529 (1876).

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legislature. The method of choosing deputies depended upon the individual locality, since each might follow its particular customs. For the most part, democratic practices prevailed until the fifteenth century. After that, the royal power interfered often, at first only to influence the choice by gifts and promises, but, finally, by the actual naming of the procurators or by their coincidence with the royal officers in the cities. One may say that in general the procedure in the various communities differed (1) as to the mode, whether by lot, election, or turn (succession); (2) as to the number of degrees, either proceeding directly or by two, and even three, steps; (3) as to the participants, whether the electors were the male inhabitants, the citizens, the heads of families, the governing body, or still others; (4) as to the choice of persons elected, whether or not confined to the official body.[12] These details depended upon the laws and customs, and upon the degree of independence enjoyed by the community. If there was one practice more usual than another, it seems to have been that of representation by officers of the *concejo,* chosen by lot from among all the eligible names, or selected by their colleagues.[13]

Just as the beginnings of representative institutions vary widely in the principal regions of Spain, so we find similar differences in respect to the imperative mandate: it was almost constantly used in Leon and Castile; it was only exceptionally employed in Aragon; in Catalonia, the device of the Vintiquatrena de Cort (in Barcelona, and what corresponded to it in the other cities) was regularly followed and made

[12] See, for example, V. Piskorskii, *Kastil' skie Kortes* . . . . 34-35 (1897); Bofarull y Romaña, 37; T. Marina, *Teoría de las cortes ó grandes juntas nacionales de los reinos de Leon y Castilla,* I, 197 (1813).

[13] Although there was variation in the number of procurators sent by each community, two was the usual number; but in no case did a city have more than one vote. Zaragoza in Aragon and Barcelona in Catalonia always sent larger delegations. In Catalonia, moreover, the votes were weighed and not counted. See Piskorskii, 38-39; Colmeiro, *Curso de derecho politico,* I, 325 (1873); Coroleu y Pella y Forgas, *Las Cortes catalanas,* 61; A. Marichalar y C. Manrique, *Historia de la legislación y recitationes del derecho civil in España,* VII, 200-201 (1862).

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strictly binding upon the deputies. I propose to treat here the imperative mandate for each of the three regions in turn, but with varying emphasis.

I. LEON AND CASTILE

When the deputies of the commons went to the Cortes, they were prepared in two directions: (1) to cast their vote on the matters proposed by the king or his lieutenant, and (2) to present their own grievances. For both they could be instructed in advance, since the convocation ordinarily stated the purpose for which the Cortes was summoned, inasmuch as in the Middle Ages parliamentary business was limited, national, and concerned with important matters, such as a new tax or subsidy, a war or peace, a guardian for a minor king, or fealty to a new ruler. Upon receipt of the letters of summons by the municipalities, the contents were made known to the *concejos,* the proposals and desires of the crown were discussed, any "public opinion" existing was manifested, and an agreement taken regarding all the matters submitted for deliberation.[14] Next, the towns swore to choose the most worthy representatives they could find. The grievances were then listed for presentation either individually from each municipality or, more often, as collected by the assembled deputies into a longer list that represented the grievances of the whole people.[15] The deputies of a town might be charged to agree to all of the king's proposals, or to disagree, with or without conditions.

From their instructions, whatever they were, the procurators were not free to depart by a single line.[16] Hence, upon leaving their cities, they took with them a complete or definite mandate that might be full or limited, containing the petitions to be presented for their constituency, the detailed instructions given in advance regarding the responses that they must

[14] J. H. Mariéjol, *L'Espagne sous Ferdinand et Isabelle,* 137 (1892); Sacristan y Martinez, 307.

[15] Mariéjol, 142; Piskorskii, 39.

[16] Colmeiro, *Cortes,* I, 37.

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make to the royal demands, and, finally, their own solution, locally arrived at, for the matters pending. In any event, the deputy was informed beforehand how he was to act and what he was to demand from the king.[17] The towns as a rule required their deputies to take oath neither to vary from their instructions nor to overstep their mandates, and this act of procuration was officially authorized by a public notary.[18] It was, in fact, the imperative mandate in all its vigor, based upon the legal fiction that the *concejo* was present, so that if the procurator spoke, it was the voice of Zamora or Seville, Salamanca or Cordova. Once in the assembly, the deputy, therefore, must abide by the instructions given him by his community and must vote according to them. If there was a grave doubt to prevent him, or if there arose at the session a matter not considered in his mandate, his duty was to ask for a suspension of voting until he could submit the revised or new question to his constituents, the *concejo*.[19] In January, 1425, for example, a Cortes was called together at Valladolid by John II for the purpose of swearing fealty to the Doña Leonor, but, since between the time of convocation and of assembling a male heir was born, new letters were despatched to all the cities commanding new powers to be issued to their procurators, so that the latter should have authority, instead, to swear fealty to the new prince.[20] All this meant that the person who bore the city's vote was a true mandatory, of little importance himself; and as such it was an offset to any detrimental effects of the electoral system, so often carried out merely by drawing lot.[21]

When, by the end of the fifteenth century, the royal letters of convocation had become less explicit than in earlier times,

[17] See the instructions given to the procurators of Toledo at the Cortes of Madrid, 1551, as quoted by Marina, I, 223-230.

[18] Colmeiro, *Cortes,* I, 29, II, 104-108; Piskorskii, 40.

[19] V. Santamaria de Paredes, *Curso de derecho politico,* 512 (1887); Sacristan y Martinez, 307; Bofarull y Romaña, 37-38; Piskorskii, 39.

[20] Colmeiro, *Cortes,* I, 38, 430-431.

[21] *Ibid.,* I, 29; F. Mellado, *Tratado elemental de derecho político,* 548 (1891).

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definite and appropriate mandates could not so well be imposed. Later, the king began to indicate in the convocations the extent of the mandates which he desired the municipalities to intrust to their mandatories; more often than not, he expected "full powers" and unlimited mandates. In convoking the Cortes of Santiago de Galicia in 1520, for example, a copy of "model" powers to be granted to the procurators was sent with the summons.[22] The towns opposed this and protested against it until, with the king's intervention in naming procurators and in general municipal affairs, their effective resistance was practically gone.[23]

[22] From the convocation: "eligades e nonbredes doss buenos personas de vosotros, quales entenderieredes cumple a nuestro seruicio e al bien e pró comun desa dicha çibdad por procuradores della, á lo cuales vos mandamos que dedes e ortorguedes vuestro poder vastante e conplido para hablar, e platicar, e tratar con ellos juntamente con los procuradores de las otras çibdades, villas e lugares dellos, las cosas que entendemos e entendiéremos de probeer e dexar probeydas que conçiernan al seruicio de Dios . . . . El qual dicho poder vos mandamos que dedes e otorguedes a los procuradores que asy elegierdes al tenor desta presente, como vos enbiamos ordenado, firmado de Antonyo Villegas, nuestro secretario, para que venga en conformidad con los poderes de las otras çibdades, . . ." *Cortes de Leon y Castilla,* III, 287.

From the *Traslado del poder de los procuradores que han venyr a las Cortes:* ". . . Por ende, en voz e en nonbre de la dicha ciudad e de todos los vezinos e moradores della, otorgamos e conosçemos que damos e otorgamos todo nuestro poder conplido, segund que lo nos avemos e tenemos e segund que mejor e mas conplidamente lo podemos e devemos dar e otorgar de derecho a vos, *fulano e fulano,* para que en nonbre de esta ciudad, como procuradores de Cortes de ella, podays yr e vayais a las dichas Cortes que sus Majestades agora mandan llamar . . . ante la qual os presenteys como procuradores della, e para asy presentados podays en nonbre desta dicha ciudad . . juntamente con los otros procuradores dellos, ver, e platicar, e conferir, e tratar sobre todas e qualesquier cosas concurryentes al sericio de Dios. . . . .

nos, desde agora lo consentimos e aprobamos, loamos, e ratificamos, e otorgamos, e lo avemos e tenemos por bueno, e nos obligamos de lo tener, guardar, complir e pagar, e aver por firme, rato, e grato, estable e valedero para agora e para sienpre jamas, como sy nos mismos lo hiciesemos e otorgasemos e a ello presentes fuesemos, e de no yr ny venyr contra ello ny parte dello en nyngun tienpo lo obligacion de nuestras personas, e bienes, e de todos los vecinos e moradores desta dicha çibdad, en firmeza de lo qual firmamos en esta carta de poder nuestros nonbres, e la otorgamos antel escriuano de nuestro cavildo, e la sellamos con el sello desta dicha çibdad. . ." *Cortes,* III, 288-290.

[23] Piskorskii, 40-42.

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In Toledo, for the Cortes convoked by Charles V at Santiago de Galicia, when the choice by lot fell upon two procurators in whom the *ayuntamiento* had not great confidence, the ample and generous powers demanded by the emperor in his summons were withheld, and the procurators were directed to hear what was proposed in Cortes and then, before making their response, to consult the city and await its orders. But in the hope that the emperor would demand that Toledo grant more generous and complete powers, the procurators would not go to the Cortes. The *ayuntamiento* stood firm, however, and finally chose new deputies to whom was given especial power in a brief, comprehensive instruction containing several definite matters. In the Cortes itself, the royal persistence in trying to persuade the deputies to grant a subsidy for which they had no instructions brought no result, for the deputies of Toledo and of some other places alleged lack of powers, keeping to their position that they were nothing more than mere mandatories of the towns which they represented, obliged to follow in all things the orders given by their constituents, and unable to assent to anything without having first received the necessary instructions. In this extremity it is obvious that the imperative mandate might serve as a safeguard to withstand encroachment on national liberty.[24] Quite plainly, more confidence was placed in the discretion, and especially in the greater firmness, of the city itself, away from royal persuasion, than in the single and uncertain procurator who had ambitions and thus might be humanly susceptible. But in 1520 the emperor's answer was to suspend the Cortes for several days, until calm was restored, and to remove the obstinate procurators of Toledo and Salamanca from the court.[25]

[24] Marina, I, 231-232. Marina adds the reply to Pedro Laso, procurator of Toledo, to the emperor that he would consent rather to be quartered or to have his head cut off before he would go outside the limits of the instruction and power given him by his community or submit to anything prejudicial to Toledo and the kingdom. His virtue, and that of the other patriots, was rewarded by banishment from the Cortes.

[25] Colmeiro, *Cortes*, II, 104-105.

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After dissolution of the Cortes, the custom was that the deputy owed to his *concejo* a complete account of the proceedings, in order to absolve himself of responsibility for not having fulfilled loyally the task put upon him, or to excuse himself for any misstep. That this "*juicio de residencia*" was not merely formal but a reality, which might be followed by severe treatment, is attested by the classical example of the disgraced Roderigo de Tordesillas, procurator of Segovia, who was arraigned by his community because he voted without power or authority for a subsidy asked by the Crown in the Cortes of Coruña in 1520. Adjudged guilty, he was dragged ignominiously through the streets by a rope around his neck, and later was hanged by the feet. This violent act of reparation, seemingly extreme, was in accordance, however, with the public opinion of an enraged town that the powers given by the *concejo* constituted law inviolable for the procurator.[26]

One of the sixteenth-century measures for counteracting the obstinacy of the municipalities in granting restricted powers was to forbid the deputies to report to their constituents what had happened in the Cortes or, without express permission of the king, to consult them in case of doubt.[27] Very likely in any event such exemplary conduct had come to seem like a work of supererogation in the more sophisticated years of the sixteenth century, for it had certainly been relaxed when we find the communes begging Charles V that, after the Cortes, the procurators be bound to report to their constituents what had been done at the session, particularly with reference to satisfying their petitions.[28]

Occasionally dissension might arise among the procurators

[26] Bofarull y Romaña, 38; Colmeiro, *Constitución,* I, 336-337, Cortes, II, 108. The procurators of Zamora, who had fled from the city, were dragged through the streets in effigy, since they could not be secured otherwise; and in Valladolid the house of one deputy was burned while its owner escaped death through his own diligence in avoiding it. By 1632 the procurators had to swear that they would not divulge to their cities what had gone on in the Cortes. A. Nuñez de Castro, *De las Cortes en . . Castilla,* 223 (1821); Marina, I, 273.

[27] Marina, I, 235-236.

[28] Colmeiro, *Curso,* 318-319.

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as to the competence or meaning of their powers. With no law or established custom sufficient to decide the dispute, the king, on the one hand, claimed settlement as within his prerogative, and the procurators, on the other, contended that they had exclusive right, absolutely independent of the king or other judge. John II refused to give up his prerogative and in the Cortes of Valladolid, in 1442, reaffirmed his right to settle a disputed procuration.[29]

When the king was meddling successfully in municipal affairs, especially by naming the deputies in accordance with his own desires, the towns tried, for a time at least, to thwart him by granting only very limited and special *poderes,* with the express stipulation that the town should be given notice beforehand whatever was to be asked in the Cortes, so that its procurator might make a fitting response. The latter, furthermore, was required to swear not to exceed his instructions. Zamora, as well as Toledo, did this on the occasion of the Cortes of Coruña, at the session postponed from the rebellious Cortes of Santiago de Galicia, when the two procurators chosen by lot were not given ordinary and sufficient powers because they were not trusted. They considered this a disgrace to themselves and besought the emperor to release them from their oath, and, considering themselves then absolved from subjection to their city's instructions, they voted for the subsidy demanded, quite as if the power given them had been absolute and full. But they were regarded as traitors, as enemies to their community, and they paid dearly for their indiscretion. Sometimes the king even discharged a procurator on the chance that another and more submissive deputy might be named. The abuses came to be many, particularly at the Cortes of Valladolid in 1518 and of Santiago and Coruña in 1520.[30]

Still other means had to be sought to break the bond which

[29] *Ibid., Cortes,* I, 38, 499-500; *Cortes de Leon y Castilla,* III, 407-408. The *cuaderno* of the Cortes, Article 12, contains the request of the cities and the king's answer.

[30] Colmeiro, *Constitución,* I, 337-338, *Cortes,* II, 104-108.

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united the will of the deputy to that of his city or town. In the Cortes of Burgos (1515) the king set up a new practice whereby deputies must present their powers to the crown's officers for examination and approval as "sufficient to treat in Cortes."[31] Later, when their powers were examined, the procurators were also obliged to declare on oath whether or not they were bearing additional or secret instructions from their cities.[32] This revision of powers by royal officers does not seem to have been a successful experiment, save that it led to other fresh attempts to gain the king's end. In his call to the Cortes of Santiago de Galicia (1520) Charles V ordered the municipal officers, among other grants, to give to their chosen procurators (who should be good persons diligently selected for his service and desirous of the public good) powers conformable to the model sent with the *carta*.[33] This command was a serious attack upon the practice of the imperative mandate and upon the powers of the third estate, since the imperative mandate, with its restricted authority, was still an essential part of the constitution of Leon and Castile.[34]

In the convocation of the Cortes of Madrid in 1632, Philip IV demanded that the cities should send procurators with powers full and sufficient to vote decisively anything that might be proposed to them on pain otherwise of not being admitted to the assembly. The procurators themselves were required to take oath not to bring with them secret instructions or restrictive powers from their cities, or anything else to limit their freedom, and precaution was taken against any such limitations being received while the session lasted.[35] This seems a final breaking-down in the check of a particular mu-

[31] *Ibid., Constitución,* I, 339, *Cortes,* I, 39.

[32] Marina, I, 236.

[33] See note 22.

[34] Colmeiro, *Cortes,* I, 39.

[35] *Ibid., Constitución,* I, 338; Marina, I, 239; Nuñez de Castro, 219. This practice was kept in the Cortes of Madrid, 1789.

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nicipality over the acts of its representatives by means of the imperative mandate.

During the thirteenth and fourteenth centuries municipal liberties had been reflected in the Cortes, so strong was the bond of union between the *concejos* and the members of the Cortes, those procurators bearing the vote and will of the *concejos*. When this was broken—when "the Cortes lacked the juice which fed it"—strength to oppose the power of the monarch began to fail in the Cortes. Even when the cities and towns that were far enough away still resisted by giving instructions according to their own aims, their procurators while at the Cortes, in the presence of the king or his representatives, as a rule lacked courage to withstand him, and in all probability they were humiliated later by their communities. For the most part, the *concejos* had to obey the order insisting upon full powers; but that some were not quickly subdued seems evident from various examples of deputies who even in the later times excused themselves from voting or who admitted bearing limited powers.[36]

II. ARAGON

In Aragon, the form of the powers given to the procurators by their communities was not that of the imperative mandate; instead, they received their authority in general terms, ample in amount for discussing, for treating, and for voting on whatever matters arose in the legislature. This did not preclude, however, special secret instructions, although these were perhaps of a general character and separated from the grant of powers, through which the deputy could be informed in advance of the opinion held by his constituency on matters likely to be considered, and informed also of what it held to be its own interests in the affair.[37] When a community had marked desires and aspirations regarding certain concrete points, it

[36] Colmeiro, *Cortes*, I, 39-40.

[37] Mellado, 556; Bofarull y Romaña, 45.

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was natural that instructions about these should be given. But the grant of powers was broader than that bestowed upon the Castilian procurator, since it apparently permitted him some freedom in voting, subject always to the general instructions, and also to special restrictions if the convocation had been sufficiently explicit to make instructions possible. For example, in 1461 Zaragoza instructed its procurators to consent, under no circumstances and in no form, to the installation of the levy of *sisas* in the kingdom.[38] When the convocation did not specify the items of business involved in calling the Cortes, as would happen in annual or biennial meetings, the authority given would have to be similarly vague. The grant of a subsidy would, in the main, come to be an expected demand, and, provided it was not unusual in amount or nature, it would, therefore, require no special powers. The reasons underlying this less imperative form of mandate in Aragon may be suggested herewith.

The Aragonese Cortes had very substantial powers. With the king it made or approved all *fueros* and laws; it interposed frequently in matters of war and peace, and even sometimes in the appointment of embassies; it voted all extraordinary taxes and aided the king in finding subsidies for wars;[39] it had some share in controlling administration.[40] The assembly, moreover, sat more frequently and demanded more prerogatives, and with steadier insistence, than did the Cortes in Leon and Castile. To these wide and recognized powers the communities were accustomed; in addition, the privilege of sending representatives to the Cortes had been acquired with comparative ease.[41] At all events, the municipalities seem to have had more pride in the central institution and less

[38] Marichalar y Manrique, VI, 183-184.

[40] The king collected the ordinary revenues, "pero las rentas proprias del Estado se cobraban por los diputados del reino y consistían en los derechos de importación y exportación, peages, etc., á que se llamaba *Derechos del General.*" Marichalar y Manrique, VI, 189. At times of urgent necessity the king appealed directly to the *ricoshombres,* who gave subsidies in return for additional privileges.

[41] *Ibid.,* VI, 187-194.

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jealousy of it. Whether because of a conception of representation more modern than mediæval, or because of other factors, the Aragonese procurator certainly did not bear a character so purely that of the *mandatorio* as did the Castilian; and narrowly restricted powers were the exception rather than the rule. Perhaps there was less need of pointing out the particular interests of the municipalities since in Aragon there was less freedom in selecting deputies from outside the governing body. The institution of deputations to act during intervals when the Cortes was not in session constituted a further element in the situation which, by assuring general control over affairs, gave a national rather than a local quality to the legislature. The Cortes in Aragon was thus more a central body and less an assembly of local delegates. To work for the good of the whole had been from very early times a general characteristic of Aragonese policy. In sum, the Cortes had wide powers, and its control was less tenuous than in Castile; the cities were accustomed to it; therefore, narrow restriction of powers may not have been thought necessary.

In this connection there should be mentioned the use of the *disientio* in Aragon, by which, until 1592, the unanimous vote of all members present in all the houses of the Cortes was required in order to enact laws (save in the case of affairs of justice, *greujes,* and a few appointments). Actually, this situation, which was capable of producing serious and prolonged deadlocks, did not greatly interfere with the work of what has been regarded as one of the most effective of mediæval parliaments, for it was nullified in practice by the choosing of commissions whose unanimous decision was accepted as if

[42] A municipality might send its deputies to the Cortes if it had ever sat there by authentic summons; thus invitation to attend was not entirely dependent upon the king's whim. It was probably more by nature an obligation, based on feudal tradition, than a right, especially in earlier times. See the clause used in charters, "*quod teneatis venire ad curiam*" (*Historia del rey de Aragon, Don Jaime,* I, 242). See also G. Martel, *Forma de celebrar Cortes en Aragon,* 10-11 (1641); J. M. Antequerra, *Historia de la legislación española,* 309 *n.* (4th ed., 1895).

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no dissent could occur against it. Naturally, the commissions were named by those in the majority and from their own supporters, and complete agreement was sure to follow. Interaction between the single veto and the imperative mandate would have been unfortunate for the passage of legislation, and could doubtless have rendered a deputy's mission ineffective. But at the same time both might serve as a safeguard against a too active outcropping of individual predilection and judgment.[43]

In Navarre, which in the early and in the late Middle Ages politically was Spanish, and always more akin to Aragon than to Castile,[44] the mandate existed in its less imperative form, more strict than in Aragon but less so than in Catalonia and in Leon and Castile. For a long time the Cortes met only when its presence was imperative, and the letters of convocation gave the reasons for the summons. Accordingly, the municipalities were enabled to grant to their representatives powers which permitted them to treat only of the matters contained in the convocation and for which, therefore, they were chosen. When, later, the Cortes had become more regular in its meeting and had acquired the right of voting the impost, the obligation appears to have been no less binding, although the mandates often contained full powers, and delegates were sometimes allowed to use their own prudence in acting upon proposals. Yet in 1505, when the two upper houses tried to introduce some reforms, the procurators of the third estate

[43] See Marichalar y Manrique, VI, 217-220; Martel, 2; also Marquis de Pidal, *Philippe II, Antonio Perez et le royaume d'Aragon*, I, 37 (1867).

[44] Navarre was a Spanish state until 1234, united to the crown of Aragon from 1076 to 1134, and with an independent king after that date. From 1234 to 1513 its affiliation was French, since it belonged successively to the house of Champagne, the French crown, the houses of Evreux, Foix, and Albret. By the marriage of John of Aragon to Blanche of Navarre, John became titular king of Navarre in 1425, but with little or no actual power. While it was not incorporated with the kingdom of Castile until 1520, during the last quarter of the fifteenth century treaty agreements made the kings of Navarre virtually protegées of Spain, and actual possession was taken by Ferdinand the Catholic in 1512 or 1513. R. B. Merriman, *Rise of the Spanish Empire, passim.*

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refused to pass them, alleging that shortness of the time remaining would not permit them to consult their towns on the matter, and that they were prepared to consider only the business for which they had been convoked.[45] It should be added that in Navarre the third estate did not hold a position of great power, not merely because of its submergence by the clergy and the nobles, but also because of the fact that, before the unanimity rule, the third estate could always be outvoted by the other two estates. Later, the clergy, being the smallest house and holding the balance, were able to promote or to impede action. Hence, what the deputies of the cities did in the Cortes was of itself not influential enough to warrant the strong measure of the imperative mandate with its limited powers.[46]

III. CATALONIA

In Catalonia was found a situation similar in many respects to that in Aragon. Here the Cortes possessed substantial powers that were constantly needed in the work of legislation. After 1283 it convened at regular periods and was convoked by letters that ordinarily did not set forth the particular occasion for assembling. In short, the calling of a parliament had become a regular procedure with no need for giving reasons for so doing. But there in our study the similarity stops. It might have followed logically that the powers given by the municipalities to their procurators would not in form contain the imperative mandate, but instead would be general permissions, as in Aragon, ample for treating, for deliberating, and for voting on whatever question might be raised in the legislature. Only for granting a service of "gracious donation" might it be necessary to have a concise condition.[47] Yet the fact was that these *sindicos* in Catalonia always were merely procurators or mandatories and that their acts were rigidly

[45] Marichalar y Manrique, IV, 421-422.

[46] M. Danvila y Collado, *El poder civil in España*, I, 220 (1885); Santamaria de Paredes, 532.

[47] Marichalar y Manrique, VII, 206.

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circumscribed, perhaps even more strictly than in Leon and Castile, but by a different means. The effective machinery was a continuous and direct contact with another body which in Barcelona was the *Vintiquatrena de Cort*, or permanent Commission of Twenty-four, and in other cities and towns was the town council itself. By this means the will of the *pueblo* need never be unknown in public business, and thus the deputy could not be diverted from his duty by intrigue, by bargain, or by favor. The syndics had to swear solemnly that they would not consent in any manner whatever to acts of business in the Cortes without the advice of the commission except in serious questions demanding immediate action for an injury incurred during the session.[48] They were in continual, almost daily, communication, and the conduct of the deputies was completely marked out for them by the orders and suggestions from the town councils and commissions. In return, the municipalities are said to have given to their deputations very good quarters and food, with decent salaries, and, on the less material side of things, they frequently sent specially delegated persons, often capable attorneys, for aid and consultation in technical matters. The deputies themselves made continuous reports to their municipalities, telling fully of all the matters great and small, even of the solemnities, that arose in the course of the legislative session. These were answered by the council or the commission, in the name of the city, pointing out the line of conduct that ought to be followed, with sufficient instructions to prevent the deputies from compromising themselves or their cities.

This expertness in interchanging information and advice came more easily because of the care taken by the municipalities in arranging living quarters for their deputies. Everything possible was done in order that they should be com-

[48] They also took oath before going to the Cortes that they would not, during the time of the mandate and within five years after its ending, accept any occupations or honors. Belaguer, 287.

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fortable, free from dangerous influences, and maintained in a dignity befitting their office. If a city sent several representatives, they were housed together, ate at the same table, and had plenty of opportunity for discussion and agreement concerning the issues at hand and in regard to their duty relating to them. Thus, in 1435, when the Commission of Barcelona could not find a suitable house which was large enough for its delegation, it rented two houses, one being in front of the other, and had a bridge built over the separating space in order that the representatives might live as much as possible like one family.[49] In short, the municipalities spared no trouble to assist their deputies, and in return could demand fulfillment of the serious obligation placed upon them.[50]

If the deputies exceeded the limits of their mandate, which was to act according to instructions given at any moment (thus there was a difference between a mandate and limited powers), or if they disobeyed their instructions, the *universidades* of Catalonia could revoke the agreements made by them. To such an extent did this go that a deputy could not even leave the Cortes for any reason whatever until he had permission from his constituents, who were consistently strict. Finally, there was introduced somewhat later the practice of solemn denunciation, with censures of the Church, both for the deputies and for the commissioners who failed to live up to their charge in the exercise of duty.[51] Another extreme step, on serious occasions, was the appeal for revocation of the powers granted to a disobedient deputy and his severe degradation, such as the city of Barcelona visited upon one of its representatives during the Cortes of Monzon in 1585. Behind this action lay the idea that the powers of political

[49] Coroleu y Pella y Forgas, *Cortes catalanas*, 84. In 1422 the law stated that the Cortes must be held only in places having two hundred fires or hearths, in order to assure adequate provision of the necessities of life for the deputies even under the unusual circumstances of the great assembly. *Ibid.*, 35, *Fueros*, 525, 529-531; Pella y Forgas, *Libertats y antich govern de Catalunya*, 136 (1905); Marichalar y Manrique, VI, 202.

[50] Coroleu y Pella y Forgas, *Cortes catalanas*, 84-86, *Fueros*, 520-521; Perez, 22.

[51] Coroleu y Pella y Forgas, *Cortes catalanas*, 87.

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agents, when exercised *ultra vires,* could be revoked by a collectivity, as an individual might revoke those of his agent. This is interesting as an early conception of what at a considerably later time was connected with the extreme radicalism of Rousseau and the French Revolution.[52]

The Commission of Barcelona, or the *Vintiquatrena de Cort,* in its association with the imperative mandate was probably one of the most unusual features of the representative system in Catalonia, as were the municipal councils in the other cities and towns. The Twenty-four in Barcelona was elected immediately after the deputies, in the same manner and with the same ratio of members to the four classes among the electors,[53] and was considered a safeguard against any hazards inherent in the method of securing loyal and intelligent deputies from among an increasing population. It had a permanent place in the Catalonian parliamentary system. To carry out its duties, the commission had complete powers, even to issuing positive orders to the deputies—orders which comprised within their scope the most serious affairs of state and the most minute matters of housing and personal safety.[54]

[52] *Ibid.,* 88.

[53] Eight were taken from the class of "honored citizens," which included *caballeros* and jurats, and no more than three *caballeros* might be chosen, although none need be (apparently to have some was considered wise); there were six merchants, five artisans, and five mechanics, drawn from the lists of their respective classes. *Ibid.,* 81.

[54] A joint commission of eighteen, called the *habilitadores,* and composed of representatives from all the *brazos* chosen by both the king and the Cortes, examined the powers and credentials of deputies claiming the right to sit in the Cortes. These they scrutinized to see whether such delegates had been duly elected and were bearing the proper powers, excluding those improperly there, with no right of appeal. They also judged, and severely, in cases of late-comers. So extensive were their duties that, according to Peguera, there were at least thirty-nine rules containing the principles followed by these officials. (See Coroleu y Pella y Forgas, *Cortes catalanas,* 107; Belaguer, 290.) Like Aragon, Catalonia had an executive body of six, the *Deputation,* to act during intervals when the Cortes were not in session. The *deputation* had jurisdiction superior to all tribunals and supervised obedience to the laws; it controlled the collection and spending of the public funds, and, in general, acted in defense of national liberty. It also could serve as a check upon the deputies.

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The limitations placed upon the Catalonian syndics, to ensure compliance with the will of the municipality and at the same time to permit a breadth of action for which a mandate given in advance could not foresee the need, represents, it seems, a real solution for the age. When there is added to this the provision of expert advice, publicly furnished and continuously available, unusual enlightenment appears to have been reached. Only the obligatory element could offend our modern susceptibilities, or, indeed, those of Burke.

An immediate result of the system of the imperative mandate had been to transfer to the municipalities themselves much of the interest in the discussion of problems and all real popular control over public affairs. The procurators had no initiative, their mission being reduced to voting and proposing only in accordance with their powers and with no faculty of passing over them. Personal opinions did not count and, furthermore, were not subject to modification in the assembly. Hence it might result that neither personal convictions, whether modified or not, nor the accord which might emerge in the sessions of the Cortes, could alter the resolution earlier reached by the municipality, of which the deputy was merely the executor. Nevertheless, the imperative mandate need not have prevented a flexible attitude toward public questions, especially in Aragon and in Catalonia, where intercommunication was feasible between the procurator and the administrative officers of the municipality. In fact, the *Vintiquatrena de Cort* seems particularly adapted to maintain some sort of current agreement among the individual representative, the unit represented, and the national assembly.

Was this true representation? Did the political organization as then known include representation at all? Parliaments held brief sessions; they had not full legislative power, and were consulted only on a small number of concrete questions. To them the delegates came as *porte-paroles* of their electors, with no powers beyond, and there was a strict obligation on them to conform to the will of their constituents. Let me refer

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to what was written in 1816 by Roger-Collard on the subject of an electoral law: "Le mot réprésentation est une métaphore. Pourque le mot soit juste, il est nécessaire que le réprésentant ait une véritable ressemblance avec le réprésenté; et, pour cela, il faut, dans le cas présent, que ce que fait le réprésentant soit précisément ce que ferait le réprésenté. Il suit de là que la réprésentation politique suppose le Mandat Imperatif déterminé à un objet lui-même déterminé, tel que la paix ou la guerre, une loi proposée."

Only by these means could the deputies in Spain, and, indeed, in France of the same period, resist the will of the monarch; that is, by shielding themselves behind the unavoidable obligation of adjusting their vote to the instructions which they had received. In time, complexity of national business, as well as the more simple autocracy of the monarch, would be bound to modify such a system. Questions are raised inevitably. What is representation in any case? And what are the irreducible conditions necessary for its appearance in the Middle Ages? In other words, when did the third estate appear as such in national legislatures?

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Second Session of the Seventy-first Congress, December 2, 1929, to July 3, 1930; Special Session of the Senate, July 7-21.[1] *Membership.* Even in seasons when politics are pointing toward congressional elections of unusual interest, the filling of vacancies in the House attracts little attention. Political perspectives are almost unavoidably narrowed by the reaction of presidential government; localism confuses general tendencies; and the prevalence of one-party areas further conceals trends which can be read only by a close scrutiny of relative returns. It is not that the opportunity for by-elections is lacking. In the course of the session under consideration, twenty-three seats in the House were vacated, five by resignation and eighteen by death. The resulting replacements brought the Democrats a net gain of one; for, though losing their sole foothold in Pennsylvania, they won in the third district in Kentucky and the second district in Massachusetts. In the latter, never previously represented by a Democrat, the victory of W. J. Granfield in the special election on February 11, 1930, was widely noted and deemed significant by many, although it was not clear whether it indicated a desire for drink or a dread of depression.[2]

The Senate came to grips at last with the long-delayed problem of the Pennsylvania senatorship. In accordance with an understanding reached in the special session, Senator Norris's resolution (S. Res. 111) to deny William S. Vare a seat in the Senate came up on December 3. Debate closed on December 6, when the resolution was adopted by a vote of 58 (25 Republicans, 32 Democrats, 1 Farmer Labor) to 22 (all Republicans). Immediately thereafter, the Senate

[1] For a note on the first session of the 71st Congress, see this *Review*, vol. 24, p. 38. For notes on the 70th Congress, see vol. 22, p. 650, and vol. 23, p. 364; and on the 69th Congress, vol. 20, p. 604, and vol. 21, p. 297. For earlier notes, prepared by Lindsay Rogers, see vol. 13, p. 251; 14, pp. 74, 659; 15, p. 366; 16, p. 41; 18, p. 79; 19, p. 761.

[2] A republican vote was gained in the contest in the 14th district of Texas between A. McCloskey, Democrat, and H. M. Wurzbach, Republican, in which the latter (the former incumbent) was declared to have been elected; the committee's report was unanimously accepted. The other contests did not result in party shifts. At the end of July, not counting nine unfilled places, members listed as Republicans numbered 261, Democrats, 164, Farmer Labor, 1. At the same time, the Senate contained 56 Republicans, 39 Democrats, and 1 Farmer Labor member.

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passed a resolution (S. Res. 177) by Senator Reed of Pennsylvania, declaring that William B. Wilson, Vare's Democratic opponent in the election of 1926, had not been elected.[3] The division here was 66 (43 Republicans, 22 Democrats, 1 Farmer Labor) to 15 (5 Republicans, 10 Democrats). On December 10, the sub-committee of the committee on the judiciary which had been authorized to investigate lobbying filed a statement regarding "one Joseph R. Grundy, who, by reason of the extraordinary and commanding place he holds among the lobbyists in the national capital, is the subject of this interim report."[4] On the following day, Joseph R. Grundy, president of the Pennsylvania Manufacturers' Association and vice-president of the American Tariff League, was appointed to the vacant seat by Governor Fisher. Without a roll-call, the Senate brushed aside Senator Nye's challenging resolution[5] and permitted Mr. Grundy to take the oath. The irony of this outcome was sharpened during the months when the tariff was the outstanding topic before Congress, but, if not blunted, its edge was turned in another direction by Mr. Grundy's subsequent discomfiture in the senatorial primary in Pennsylvania.

Organization. In the House the central organs of control had been instituted in the special session and were continued without change.[6] Of the standing committees, however, only those on agriculture and ways and means and the three committees concerned with the machinery of legislation generally—rules, enrolled bills, and printing—had been elected in April, and before the adjournment on November 22 only the committee on appropriations had been added. On December 12

[3] In this the Senate followed the finding in the report of the committee on privileges and elections, tardily tendered by Senator Shortridge on December 5 (S. Rept. 47).

[4] 71st Congress, 2nd Session, S. Rept. 43, part 3. The report closed with the statement: "It was nowhere revealed in the testimony of Mr. Grundy that either he or anyone on his force was in a situation to offer any enlightenment to members of either House on any matters pertinent to the discussion of the tariff bill not available to them on application to the Tariff Commission and other branches of the government. The inference is irresistible that it was believed by him and by those associated with him that by reason of the very substantial aid he had rendered as revenue raiser for political campaigns he would be able to influence the action of his party associates in the Congress."

[5] S. Res. 185, which was referred to the committee on privileges and elections, and on which that committee reported unfavorably on January 31 (S. Rept. 147), ending the matter.

[6] See table in this *Review*, vol. 24, p. 40 (February, 1930).

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the remaining committees were formally constituted by the adoption of resolutions (H. Res. 92, 93) offered separately by the majority and minority leaders.

The leaders of the Senate, meanwhile, had undertaken to revise the existing scheme of committee assignments. It was not until January 10, however, that Senator McNary, as chairman of the Republican committee on committees, was ready to bring the new slate before the party conference. It was approved at another meeting on the following day, and a few hours later by the Senate itself, although not without echoes of the dispute that had embarrassed the committee on committees. The Progressive faction won, in that Senator La Follette triumphed over Senator Goff (technically his senior) in securing an assignment to one of the two vacancies in the finance committee; but it was remarked that the other place went to a newcomer, Thomas of Idaho, who, although a westerner, had voted against debentures. There was grumbling, too, because McMaster of South Dakota was not put on the commerce committee. Senator Howell decried the fact that nine of the eleven Republican members of the commerce committee came from places east of a line drawn through Omaha. The plea for McMaster, pressed by Howell in the conference on January 10, invited a counter-attack that jeopardized the tenuous compromise centering on the vacancies on the finance committee, and in the face of this the fight was not forced.[7]

The changes in the party instrumentalities in the Senate were nominal rather than real. At the conference on January 10, Senator McNary of Oregon was chosen assistant floor leader in place of Senator Jones. Senator McNary had in fact been serving in that capacity. During the remainder of the session, so far as day-to-day matters of management were concerned, he was more in evidence than the titular majority leader. It was not until April 8 that Senator Watson announced the appointment of the steering committee (the "committee on order of business of the Republican conference"), consisting of Goff of West Virginia, chairman, Hastings of Delaware, Kean of New Jersey, Vandenberg of Michigan, and Frazier of North Dakota.

From the viewpoint of the public interest, the resignation of the able legislative counsel of the Senate, Frederick S. Lee, who has

[7] A troublesome four-to-four deadlock in the committee on committees was broken on January 8 when Senator Smoot voted for La Follette.

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entered the private practice of law, is greatly to be regretted. It is reassuring that the Vice-President solicited the advice of the retiring counsel and on his recommendation, concurred in by his two predecessors and by the legislative counsel of the House, appointed Mr. Lee's senior assistant, Charles F. Boots, as the best qualified person from a technical standpoint.

Procedure. A measure of the extent of the House's confirmed sense of dependence on special rules for the consideration of measures was afforded by the fact that as early as the end of January the committee on rules made public a list of sixty requests for aid through special orders which had been made to it. The number of such rules reported by committee and adopted by the House—nineteen, involving the consideration of twenty-seven items of legislation—was in line with comparable totals in recent long sessions: 19 in the first session of the 68th Congress, 16 in the first session of the 69th, and 17 in the first session of the 70th.

The standing rules of the Senate were amended by abolishing the necessity for the consideration of bills in committee of the whole. Speaking on May 15 against the adoption of the new rule, Senator Dill attributed the movement for it to feeling produced "because the coalition which worked on the tariff bill wrote a lot of amendments into the bill while it was in committee of the whole, and when the bill got into the Senate those amendments were reconsidered and a lot of them were stricken out." The vital question in the abandonment of the double consideration involved in the former practice was whether the ability to move for reconsideration was an adequate substitute. Some of the opposition to the change was allayed by Senator Norris's amendment, whereby a motion for reconsideration (which must be made within two days) can be made not only by a member "voting with the prevailing side" but also by one who was absent at the time of the original vote. Thus altered, the proposal (S. Res. 227 amending Rules XIV and XV) was adopted on May 16 by a vote of 48 (29 Republicans, 18 Democrats, 1 Farmer Labor) to 13 (7 Republicans, 6 Democrats).

In long sessions, filibustering is not likely to be effective, even when summer is at hand and elections near.[8] Nevertheless, one clôture

[8] What was said to have been the first filibuster in the House in eight years—a statement the writer has not attempted to verify—led on May 14 to an order for the arrest of members in the effort to obtain a quorum. The bill under con-

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motion, bearing 17 names, was filed in the course of the legislative session. In submitting it on June 24, while the second deficiency appropriation bill (H. R. 12902) was under consideration, Senator Jones, chairman of the committee on appropriations, explained the situation that elicited it: "The senators from Arizona (Mr. Ashurst and Mr. Hayden) feel that they are compelled to make all the opposition they possibly can to the provision in the bill relating to Boulder Dam. I have advised them as to the action I feel we should take because of the nearness of the end of the session, and so, under the rule, I submit the motion which I send to the desk." Clôture did not come to a vote, however, for on the following day an understanding was reached whereby the senators from Arizona were satisfied with two hours apiece in which to discuss the amendments which they unsuccessfully advocated.[9] During the special session of the Senate, a clôture motion was circulated but not submitted. On July 17, following a conference with an impatient president, the majority leader attempted to reach an agreement with Senator Johnson for the termination of debate on the naval treaty. When the latter refused, Senator Watson began to pass the petition about, remarking that in the event of persistent "talking for the express purpose of dissipating a quorum, ... we shall then have to resort to the only method we have left to us of closing debate." The threat was not carried out. Some observers attributed the reluctance of the leaders, in part at least, to fear of an unfavorable reaction on public opinion.

Relations of the Houses. With disparate political combinations in control of the Senate and the House, it is natural that the punctilio of bicameral etiquette should be frequently strained and sometimes

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sideration (H. R. 2152, for the establishment of a foreign agricultural service) was understood to be disapproved by the administration, and it was apparently the leaders who sought to impede the measure. On May 16, however, the bill was passed without a roll-call by a vote of 195 to 75; and, approved by the President on June 5, it became Public Law No. 304.

[9] The controversial item was an appropriation of $10,660,000 for immediate work at Boulder Dam. Arizona's spokesmen attacked, among other things, the fairness and legality of the contracts in connection with the completed project arranged by the Secretary of the Interior. On June 21, a point of order against the appropriation made by the representative from Arizona was not sustained and an amendment offered by him was rejected, 29 to 101. On June 26, several amendments offered by the Arizona senators were lost without a record vote.

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snapped. An instance of friction arose from the hardly excusable manner in which Speaker Longworth dealt with the joint resolution (S. J. Res. 3, popularly called the "lame duck amendment") which for the fifth time passed the Senate on June 7, 1929, by a vote of 64 (36 Republicans, 28 Democrats) to 9 (7 Republicans, 2 Democrats). The proposal aims not merely at the curtailment of service after defeat but also at the elimination of the strangulating short sessions and of the long periods in odd-numbered years in which the President enjoys a vast discretion in convening or in not convening special sessions of Congress. For ten months the resolution remained on the Speaker's desk. When, on April 17, he at last referred it to the committee on the election of president, vice-president, and representatives in Congress, his explanation was that he had held it on the assumption that a rule would be adopted providing for the reference of all proposed amendments to the judiciary committee.[10] Meanwhile, on April 9, Senator Norris introduced a resolution (S. Res. 245) which called attention to the discourtesy to the Senate and provided that a select committee should "look into the matter" lest it establish a "precedent which, if carried to its logical conclusion, will bring misunderstanding between the coördinate branches of the Congress. . . ." Consideration of this resolution of virtual censure went over until April 21. When the vigilant Fess made a point of order against Norris's use of the phrase "arbitrary action," the Vice-President ruled that since the Senate, unlike the House, has not adopted Jefferson's Manual as part of its rules, "it is left to the discretion of senators as to what they may or may not say about the proceedings of the House in connection with the resolution under consideration." Tart comment followed, but the resolution itself was dropped without coming to a vote.

For its part, the House paraded its sense of the proprieties. It is true that in a call at the White House on February 17 and in a statement made in this connection, the majority leader complained of the situation in the other chamber. "I am not criticizing the Senate," he said, "but remarking on a deplorable condition." The Speaker was even more scrupulous. On April 28, Mr. Luce sought on grounds of privilege to secure consideration of a resolution providing that a "respectful message be sent to the Senate," calling attention

[10] On April 8, the House committee on the election of president, vice-president, and representatives in Congress reported a somewhat similar proposal (H. J. Res. 292, H. Rept. 1105).

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to the violation of proper parliamentary practice involved in the remark of a senator a few days before in speaking of the action of the House on veterans' legislation, that "the House broke away from its masters and expressed itself in resentment against repressive measures and policies." The Speaker held that the resolution was not privileged. On related grounds, but more firmly, he ruled on May 6 that Mr. Laguardia was out of order in saying, with reference to the fact that the sub-committee of the Senate committee on naval affairs has tendered no report on the Shearer case: "I would like to know what pressure is being brought on Senator Shortridge that he is improperly witholding this information."

Wrangling regarding conference is not new, but the recent session evoked more than is usual. Notable obstinacy marked the conference stage of the District of Columbia appropriation bill, leading to a protracted deadlock that threatened to leave the District stranded. The dispute concerned the size of the subvention from the national treasury. The House favored $9,000,000; the Senate, $12,000,000. Senator Capper said: "I have never had any experience such as I have had in this controversy, where the committee representing the body at the other end of the Capitol has shown such a spirit of utter disregard of the fundamental idea back of conferences, where a committee has been so unyielding, so uncompromising, so stubborn in its attitude." By a vote of 54 to 5, the Senate resolved (S. Res. 299) "that it is the sense of the Senate that $9,000,000 is not a sufficient contribution to be made by the federal government to the expense of the District of Columbia." At the last minute the conference committee agreed on $9,500,000 and the Senate swallowed its virtual defeat, while the House authorized a select committee to investigate the question of fiscal relations with the District (H. Res. 285).[11]

[11] The relations between the houses are involved in a concurrent resolution (H. Conc. Res. 41) which passed the House on July 3, but has not been acted upon by the Senate. It proposes to create a joint committee to study procedure in cases of impeachment. In this connection it is noted that on January 29 the committee which, pursuant to resolutions adopted in the 70th Congress (H. Res. 431, 434), had been investigating charges against Grover M. Moscowitz, a judge in the eastern district of New York, reported that it did not find sufficient facts on which to base an impeachment, although it did "not approve each and every act of Judge Moscowitz concerning which evidence was introduced." It recommended that no further action be taken (H. Rept. 1106). The stand of the committee was confirmed by a resolution adopted in the House on April 8 (H. Res. 204).

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The clash over the size of the lump sum contribution to the expenses of the District of Columbia was not typical. Recriminations regarding the handling of bills in conference were many, especially in the Senate, but the reverberations seldom arose from the meeting of irresistible forces and immovable or nearly immovable bodies. The usual type of disagreement, notably illustrated in the outcome of tariff and veterans' legislation, was summarized with characteristic force by Senator La Follette on July 3, when he said: "I am tired of having important contests which have been won here by a majority of the peoples' representatives in the Senate dissipated, frustrated, and defeated by a majority of conferees who led the fight against the particular amendments. . . The Senate has it within its power, and it is the right of the Senate, to select the conferees who are to represent it in conferences with the House of Representatives. It is merely a precedent and custom that the conferees shall be appointed by the chair, and that they shall be the three ranking senators upon the committee having in charge the legislation." Apart from half-heartedness on the part of the Senate's own spokesmen, the House organization has held, and has not been reticent in hiding, the immense advantage of its alliance with the executive.

Tariff-making. The fluctuating lines of the tariff battle illustrated the power of such an alliance, even when the executive seemed content with an indirect, essentially negative influence. The tariff bill[12] engrossed most of the time and much of the attention of the Senate from the opening of the session until March 24, when the measure was ready for conference. During this period, the rate schedules were virtually gone over three times: first, while the committee of the whole was dealing with questions raised by amendments from the finance committee; second, from February 5 until March 3, when individual amendments were being considered in committee of the whole; and finally in the Senate proper, where over a hundred reservations brought many matters previously decided again to a vote. During twelve weeks of conference, the bill crossed the threshold of each house on three separate occasions. Amid so much counter-marching in a matter preëminently characterized by the particularity inherent in commodity consciousness, it is well-nigh impossible to measure the

[12] H. R. 2667, passed by the House on May 28, 1929, by a vote of 264 (244 Republicans, 20 Democrats) to 147 (12 Republicans, 134 Democrats, 1 Farmer Labor).

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extent of the retreat of the so-called Coalition, to appraise their net achievement, and to explain the cause of their recession as the tariff moved from committee of the whole into its final stages in the Senate.

While the bill was in committee of the whole, the run of the voting showed the Coalition's power. Defeats were numerous, of course. On January 6, a committee amendment increasing the duty on certain kinds of wool yarn from 40 to 45 per cent was adopted by a vote of 35 (31 Republicans, 4 Democrats) to 29 (8 Republicans, 21 Democrats), while Mr. Grundy, senator, yielding to Mr. Grundy, manufacturer of wool yarn, scrupulously refrained from voting. Another instance of defeat marked Senator La Follette's vigorous attack on the use of American valuations in the duties on coal tar dyes, which was repelled on February 4 by a vote of 57 (37 Republicans, 20 Democrats) to 23 (11 Republicans, 12 Democrats). On the whole, however, the victories of the tariff's critics during this period were outstanding. On January 7, a committee amendment increasing the rate on woven silk fabrics from 55 to 60 per cent was rejected by 32 (31 Republicans, 1 Democrat) to 40 (14 Republicans, 26 Democrats). When the roll-call on the highly controversial question of sugar was reached on January 16, after six days of debate, Senator Harrison's amendment to restore the 1922 rate of $1.75 per hundredweight (instead of $2.40, as in the House bill, or $2.20, as the finance committee recommended) won by 48 (18 Republicans, 29 Democrats, 1 Farmer Labor) to 38 (34 Republicans, 4 Democrats). On January 24, shoes, along with hides and leather, were restored to the free list by a vote of 46 (20 Republicans, 25 Democrats, 1 Farmer Labor) to 28 (24 Republicans, 4 Democrats). Cement, also, was restored on January 31, by a vote of 40 (15 Republicans, 24 Democrats, 1 Farmer Labor) to 35 (29 Republicans, 6 Democrats). On February 17 an amendment that reduced the duty on crude and scrap aluminum from five cents to two cents a pound was adopted by 41 (15 Republicans, 26 Democrats) to 39 (34 Republicans, 5 Democrats).

In a situation in which the margins of control were prevailingly narrow, not many defections were required to reverse the drift of voting. The inherent instability of what was called the Coalition was revealed in some important roll-calls even while the bill was still in committee of the whole. So far as the Coalition was a concert of the spokesmen of the claims of raw materials to a better relative position in the scale of protection, such cohesion as it possessed was

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sure to be profoundly affected by the failure of any of its members to join in any insistent demand in behalf of an extractive industry. Such a denial was the defeat on February 28 of the requested duty on oil—one dollar a barrel for crude oil and 50 per cent on oil derivatives—for which the Oklahoma senators were especially clamorous; they were repulsed by a vote of 27 (20 Republicans, 7 Democrats) to 39 (17 Republicans, 22 Democrats). Lumber fared as badly; on February 27, the proposal to remove it from the free list failed by a vote of 34 (25 Republicans, 9 Democrats) to 39 (19 Republicans, 20 Democrats). The observer is at a loss to know how literally to take the charges of trading that were heard increasingly from this time on.[13] Certain it is that the recoil of such votes as these made many receptive candidates for new alliances.

Circumstantial evidence is available in several notable reversals which took place after March 4, when the measure was reported from the committee of the whole. Sugar, cement, and lumber were involved. On March 5, Senator Smoot's amendment, calling for a duty of $2.00 a hundredweight on Cuban raw sugar and $2.50 on sugar from other countries,[14] secured 47 votes (38 Republicans, 9 Democrats) to 39 (13 Republicans, 26 Democrats).[15] On March 7, a duty on cement was approved, 45 (36 Republicans, 29 Democrats) to 37 (13 Republic-

[13] In a prepared statement issued on March 11, at a time when the disintegration had gone far, Senator Nye of North Dakota reviewed the story: "For months real progress was made . . . . then came the development of sugar, cement, lumber, oil craving and appetites, engineered by astute and experienced high tariff lords like Grundy, who is now teaching so-called party leaders how to lead. . . . ." Speaking on March 24, Senator La Follette described the bill which was about to pass as "the product of a series of deals, conceived in secret, but executed in public with a brazen effrontery that is without parallel in the annals of the Senate." At the close of a warm discussion of the oil lobby on March 20, Senator Waterman (Colo.) said: "I have stated upon the floor of the Senate, and I have stated in the presence of senators elsewhere, that, by the eternal, I will not vote for a tariff upon the products of another state if the senators from that state vote against protecting the industries of my state, and I stand upon that platform.

[14] For comment on the relation of the tariff controversy to the revival of support for Philippine independence, see below, p. 941.

[15] Senators who changed their position on sugar rates, voting for retention of existing rates on January 16 and for the Smoot amendment on March 5, were Jones (Wash.), Metcalf (R.I.), Pine (Okla.), and Schall (Minn.), Republicans; Ashurst (Ariz.), Dill (Wash.), Hayden (Ariz.), Thomas (Okla.), and Trammell (Fla.), Democrats.

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ans, 24 Democrats).[16] The third outstanding reversal occurred on March 20, when, by 39 (27 Republicans, 12 Democrats) to 38 (21 Republicans, 17 Democrats), the Senate agreed to tax soft woods at $1.50 per thousand board feet. Oil, however, again failed to secure protection, although only by a hair; the amendment proposing a duty of 40 cents a barrel lost by a vote of 37 (28 Republicans, 9 Democrats) to 38 (17 Republicans, 21 Democrats).

The extent of the ground lost between March 4 and March 24 can be roughly judged from figures presented on that day by Senator La Follette. The bill, in the form in which it passed the House, contained 845 increases and 82 decreases in the rates of the 1922 tariff act; at the time it left the committee of the whole of the Senate, it carried 620 increases and 202 decreases. During its final stage in the Senate, however, 75 increases were voted, involving imports amounting to $355,000,000, whereas there were 31 decreases, involving commodities with imports worth $34,000,000.[17]

On March 24, the tariff measure passed the Senate by a vote of 53 (46 Republicans, 7 Democrats) to 31 (5 Republicans, 26 Democrats).[18] Embodied in it were 1,253 amendments to the House Bill.

[16] Senators who voted against the duty on cement on January 31 and for it on March 7 were Couzens (Mich.), Nye (N.D.), and Pine (Okla.), Republicans; Tydings (Md.) and Wagner (N.Y.), Democrats. Pittman (Nev.), a Democrat, was paired against the duty in the earlier vote and for it in the later one. It should be noted that Nye later moved for reconsideration of the votes on sugar and cement in order to purge himself of what he called the "sugar-cement-lumber-oil combination." When the Senate acted on his motion on March 13, the new lines held, in the face of the counter-attack, by a vote of 38 (13 Republicans, 25 Democrats) to 47 (38 Republicans, 9 Democrats) in the case of sugar, and of 38 (14 Republicans, 24 Democrats) to 47 (37 Republicans, 10 Democrats) in the case of cement.

[17] A summary was presented at the same time by Senator Smoot, expressed in terms of ad valorem rates (based on the dutiable schedules, and weighted with reference to imports in 1928), which showed the following comparative rates: under the 1922 act, 34.61 per cent; under the bill as it left the House, 43.15 per cent; under the finance committee bill, 40.54 per cent; and under the bill as it passed the Senate, 38.99 per cent. Senator Harrison gave 35.10 per cent as the corresponding figure for the measure at the time it was reported by the committee of the whole on March 4.

[18] The Democrats who voted for it were Broussard and Ransdell (La), Trammell (Fla.), Copeland (N.Y.), Bratton (N.M.), Kendrick (Wyo.), and Pittman (Nev.). The five Republicans who voted against it were Blaine and La Follette (Wis.), McMaster and Norbeck (S.D.), and Norris (Neb.). Shipstead, Farmer

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The adjustment of so many points of difference was time-taking, and, in view of the uncertain control of the Senate, it was not without risks. On April 2, the House adopted a rule by which the bill as a whole, like an unopened package, was hurried to the conference room.[19] It was deemed good strategy to stretch precedents a little by presenting the conference report first in the House.[20] A report that covered most of the provisions of the bill was submitted on April 29 and was adopted on May 1, by a vote of 240 (232 Republicans, 18 Democrats) to 151 (16 Republicans, 134 Democrats, 1 Farmer Labor). On that day and the next, action on the rate schedules was completed by separate votes on cement, sugar, lumber and shingles, and silver. During this brief stage the House was out of hand. The duty on cement, proposed by the Senate—six instead of eight cents—was accepted without a roll-call.[21] On sugar, also, the Senate's amendment, which put the duty at $2.00 instead of $2.40, prevailed by a vote of 229 (91 Republicans, 138 Democrats, 1 Farmer Labor) to 160 (148 Republicans, 14 Democrats). On lumber and shingles, however, the duty imposed by the Senate was rejected, and, by a vote of 250 to 144, these materials were restored to the free list. On silver, too, the duty allowed by the Senate was overwhelmingly defeated.

The differences regarding the flexible tariff and farm debentures were still unresolved. The House brought pressure by two crucial

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Labor (Minn.), was paired against it. Fletcher, Democrat (Fla.), was paired for the bill.

[19] The resolution (H. Res. 197) was agreed to by 241 (227 Republicans, 14 Democrats) to 153 (19 Republicans, 133 Democrats, 1 Farmer Labor). This step was preceded by a canvas of the situation by the steering committee, and gentlemanly understandings were reached among the majority members regarding separate votes later on particular items—notably a promise to a sugar group comprising members from thirteen sugar-growing states, presided over by Mr. Crampton of Michigan. Beginning on April 4, Mr. Garner, ranking minority member, began to tell the House of the day-to-day happenings in conference, and the actions of the conferees were probably better known than usual.

[20] The tactical plans were arranged, or at least announced, on April 24 at a White House breakfast—one of several instances during the session of that firmly-grounded instrument of government.

[21] A Senate amendment providing that cement for use on public works might be imported free was defeated by 167 (45 Republicans, 122 Democrats) to 221 (192 Republicans, 29 Democrats).

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votes on May 3, whereby the Senate's amendment to repeal the President's flexible tariff powers was disapproved by a vote of 154 (12 Republicans, 141 Democrats, 1 Farmer Labor) to 236 (228 Republicans, 8 Democrats), and the amendment giving to the Federal Farm Board optional authority to issue export debentures was rejected by 161 (48 Republicans, 112 Democrats, 1 Farmer Labor) to 231 (194 Republicans, 37 Democrats). The Senate capitulated slowly. On May 7, the bill was returned to conference, without action on the partial report, and with eight matters still in dispute. On May 19, however, the Senate agreed to Smoot's resolution directing that the conferees "be relieved from the promise that no agreement in conference on the export debenture or flexible tariff would be made until opportunity was afforded in the Senate for a separate vote on such items." The administration victory was perilously close: on debentures, 43 (37 Republicans, 6 Democrats) to 41 (12 Republicans, 28 Democrats, 1 Farmer Labor); on the flexible provision, 42 to 42 with the Vice-President intervening to break the tie.

The conferees finished their task on May 24. In the Senate, however, points of order were sustained on June 5 against certain items, on grounds such as the objection that the "compromise" rates were higher than both figures in dispute. Again the bill was returned to conference. In the House, a special rule, adopted by a vote of 220 to 139, cleared the way of points of order, separate votes, and other obstructions. On June 13, both bodies accepted the conference report. The vote in the House was 222 (208 Republicans, 14 Democrats) to 153 (20 Republicans, 132 Democrats, 1 Farmer Labor).[22] The Senate stood 44 (39 Republicans, 5 Democrats) to 42 (11 Republicans, 30 Democrats, 1 Farmer Labor).[23] Approved by the President on June

[22] In the final roll-call in the House, the Democratic members who voted for the measure were distributed as follows: La., 7; Fla., 2; Tex., 1; Colo., 1; Calif., 1; Wash., 1; Mass., 1. The Republicans in the negative comprised: Wis., 7; Minn., 4; S.D., 2; Iowa, 1; Mo., 1; Okla., 1; Calif., 1; N.Y., 2 (Mr. LaGuardia and Mrs. Pratt); Ky., 1.

[23] Democrats who voted for the conference report were Broussard and Ransdell (La.), Fletcher and Trammell (Fla.), and Kendrick (Wyo.). Republicans who opposed it were: La Follette and Blaine (Wis.), McMaster and Norbeck (S.D.), Norris and Howell (Neb.), Frazier (N.D.) (with Nye paired against it), Schall (Minn.), Brookhart (Iowa), Pine (Okla.), and Borah (Idaho). On the eve of the final vote, speaking in the Senate on June 12, Senators Reed and Grundy of Pennsylvania, confessing their disappointment with so imperfect a tariff, announced that they had nevertheless decided to prop up its tottering fabric. Pose

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17, the Tariff Act of 1930 (Public No. 361) became effective the following day.

The Gage of Unemployment. It is perhaps unfair to ask more of any Congress that furnishes the adrenalin of a new tariff. Nevertheless, the observer cannot help applying to our legislative processes and those in charge of them the test of the needs immediately presented by a serious economic disturbance.

The conceptions of public policy dominant in the past decade make tax reduction almost a reflex in any crisis. To most members of Congress, the promise virtually made by the Treasury in late October that there would be a cut in income taxes for 1929 seemed as natural an expedient as emptying sandbags from a sinking balloon. On December 5, after barely three hours' discussion, and by division of 282 to 17 without a roll-call, the House approved a joint resolution (H. J. Res. 133) whereby it was estimated that a temporary tax reduction of $160,000,000 would be effected through a flat one per cent drop in normal individual income tax and corporation tax rates. The opposing philosophy of debt reduction and constructive governmental expenditures found more support in the Senate. Twice as much time was given to debate and four amendments were forced to a record vote. In the end, on December 14, the joint resolution was passed by the decisive majority of 63 (39 Republicans, 24 Democrats) to 14 (11 Republicans, 3 Democrats) and was approved two days later (Public Res. 23).

The President's references in his message of December 3 to his activities in behalf of sustained construction were more in the way of a summary of semi-official administrative relations already made than an exhortation to Congress.[24] He added, however, "we have can-

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or not, their reluctance went well with the Administration's attempt to emphasize the extent to which agricultural rates had been increased. President Hoover, in a statement released on June 15, pointed out that according to Tariff Commission estimates, "the average rate upon agricultural raw materials shows an increase from 38.10 per cent to 48.92 per cent, in contrast to dutiable articles of strictly other than agricultural origin, which show an average increase of from 31.02 per cent to 34.31 per cent."

[24] "I have," the President wrote, "instituted systematic, voluntary measures of coöperation with the business institutions and with state and municipal authorities to make certain that fundamental businesses of the country shall continue as usual, that wages and therefore consuming power shall not be reduced, and

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vassed the federal government and instituted measures of prudent expansion in such work that should be helpful and upon which the different departments will make some early recommendations to Congress.'' In a session notably friendly to services of developmental character,[25] the outstanding aid to primary construction was the liberalizing of federal aid for roads.[26] For the first time in several years, an omnibus rivers and harbors bill was enacted.[27] The program for the construction of public buildings was also extended, without changing its pattern, by an act that authorized appropriations totaling $230,000,000, about evenly divided between building within and without the District of Columbia.[28]

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that a special effort shall be made to expand construction work in order to assist in equalizing other deficits in employment.''

[25] See below, p. 939.

[26] An amendment to the federal aid road act authorized an additional $50,000,000 for the fiscal year 1931, raised the regular allotments for the two following years from $75,000,000 to $125,000,000, and increased the maximum contribution on the part of the national government from $15,000 to $25,000 per mile (H. R. 5616, approved April 4, Public No. 90). Meanwhile, a joint resolution had made available an additional $31,400,000 for use in the current year (H. J. Res. 241, approved February 7, Public Res. No. 7).

[27] H. R. 11781, approved July 3, Public No. 520. In the form in which it passed the House on April 25, it carried authorizations aggregating $116,285,027; the Senate added items totaling $28,596,875. It was said that the ultimate cost of the projects that it sanctions will be near $350,000,000. In the course of its consideration, the most controversial feature was the item permitting the state-owned canals in New York to be taken over without cost to the United States, which (if New York agrees) will maintain them at an estimated annual cost of $2,500,000. The advocates of the St. Lawrence proposal found a threat in this clause. A seven-state group headed by Burtness (N.D.) and Brigham (Vt.) was gathered, but their effort to dislodge the item failed, 59 to 148. In the Senate, by way of reassurance, the provision was altered by adding the qualification that, if taken over, the canals are to be operated ''as barge canals only, and not as, or with any intention to make them ship canals, or to hinder or delay the improvement of the St. Lawrence Waterway as the sea way from the Great Lakes to the ocean.'' The bill passed in the Senate without a record vote, but not until Senator Blaine's amendment limiting the discretion of the Secretary of War in approving Great Lakes diversion had been accepted on June 19 by a vote of 45 (25 Republicans, 19 Democrats, 1 Farmer Labor) to 21 (12 Republicans, 9 Democrats).

[28] H. R. 6120, approved March 31, Public No. 85. This act, taken in conjunction with other legislation in recent years, contemplates the appropriation of $500,000,000 for public buildings in the next ten years, at the rate of about

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The atmosphere created by the Administration was on the whole favorable to such appropriations, but twice at least sharp cries "deficit, deficit," were heard at the other end of the Avenue. It must be admitted that their reiteration in former years has dulled their authority. Under the immediate circumstances, some were puzzled regarding the consistency of the leadership they were attempting to follow. As a matter of fact, the total of the regular annual, deficiency, and miscellaneous appropriation acts amounted to $25,115,353 less than its budget estimates. An accompanying table[29] shows in more detail how the reduction was accomplished. The net increase of $209,018,194 over the appropriations of the last regular session was due more to veterans' legislation than to programs of public construction.

So far as new legislation aimed directly at unemployment was concerned, the results showed a lack both of responsiveness in Congress as an organization and of effective interest on the part of the Administration. Three measures—phases of a familiar program—were sponsored in the Senate by Senator Wagner. Of these, only the brief provision for the collection of more adequate employment data became law.[30] The other bills were more controversial. One (S. 3059) sought to secure buffer employment through advance planning and regulated construction of public works by instituting an ex-officio board, by various amendments in the direction of greater flexibility in legislation affecting roads and other construction, and by authorizing an appropriation of $150,000,000 in any year. The other (S. 3060) was intended to extend a coördinated system of employment exchanges by means of federal aid. The bill for the planning of public works passed the Senate on April 28. In the case of the employment service measure, the opposition of the National Manufacturers' Association led

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$50,000,000 annually. The attention to the beautification of the District of Columbia has been a notable theme in recent legislation. The care with which its future is being guarded was illustrated in a resolution, authorizing the erection (without expense to the United States) of a memorial to William Jennings Bryan, which states that it must not be "on any ground within one half mile of the Capitol."

[29] P. 929. The table is rearranged material from S. Doc. 212, comprising the annual statements prepared by Mr. Sheild and Mr. Rea, clerks of the two committees on appropriations.

[30] S. 3061, passed by the Senate on April 28 and by the House on July 1, approved July 7, Public No. 537, enlarging the list of industries for which the Bureau of Labor Statistics must collect monthly unemployment statistics.

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to the holding of additional hearings, but the bill was approved on May 12 by a vote of 34 (12 Republicans, 21 Democrats, 1 Farmer Labor) to 27 (23 Republicans, 4 Democrats). It was an ill portent

RECAPITULATION OF APPROPRIATION ACTS, SECOND SESSION OF SEVENTY-FIRST CONGRESS

Title of Act	Budget estimates, Seventy-first Congress, second session	Totals of bills as reported by House Committee on Appropriations	Appropriations, Seventy-first Congress, second session	Increase (+) or decrease (−) appropriations compared with budget estimates	Increase (+) or decrease (−), appro. Seventy first Congress second session, compared with Seventieth Congress, second session
Regular Annual Acts					
Agriculture	$160,372,474	$153,255,460	$155,397,770	−$4,974,704	+$10,886,216
District of Columbia	45,567,028	45,334,317	45,776,032	+209,004	+7,303,417
Independent offices	553,685,388	552,372,213	553,523,166	−162,222	+12,077,426
Interior	286,543,647	283,189,973	286,543,423	−224	+957,960
Legislative	30,676,327	26,000,341	26,557,767	−4,118,560	+7,897,122
Navy	382,422,676	377,036,086	380,573,111	−1,849,565	+20,336,414
State, Justice, Commerce, and Labor	114,468,723	113,799,286	114,253,236	−215,487	+2,372,348
State	17,224,926	16,779,269	17,020,469	−204,457	+2,419,990
Justice	32,080,042	31,710,362	31,771,112	−308,930	+3,833,742
Commerce	52,952,985	53,088,985	53,240,485	+287,500	−5,337,124
Labor	12,210,770	12,220,670	12,221,170	+10,400	+1,455,740
Treasury and Post Office	1,162,402,642	1,147,778,908	1,149,088,008	−13,314,634	+30,797,809
Treasury	322,152,065	312,284,831	312,304,931	−9,847,134	+8,630,457
Post Office	840,250,577	835,494,077	836,783,077	−3,467,500	+22,167,352
War Department	457,308,917	454,231,386	456,544,151	−764,766	+2,754,789
Military	339,511,465	337,058,194	339,106,459	−405,006	+8,068,017
Non-military	117,797,452	117,173,192	117,437,692	−359,760	−5,313,228
Total, regular annuals	3,193,447,823	3,152,997,971	3,168,256,665	−25,191,158	+95,383,503
Deficiency Acts					
First, 1930	168,970,193	48,177,854	169,547,689	+577,496	.....
Second, 1930	75,426,550	66,199,384	74,105,104	−1,321,445	.....
Total, deficiency acts	244,396,743	114,377,238	243,652,794	−743,948	+31,650,741
Miscellaneous Acts					
Miscellaneous relief and other acts	42,689,027	.....	43,468,781	+779,754	+41,786,964
Total, regular annual, deficiency and miscellaneous acts	3,480,533,594	3,267,375,209	3,455,378,241	−25,155,353	+168,821,209
Permanents and Indefinites					
Total, permanents and indefinites	1,378,679,735	.....	1,417,022,855	.....	+38,343,119
Grand total	4,665,236,768	.....	4,872,401,096	.....	+207,164,328
Less sums payable from postal revenues	842,125,220	.....	840,271,353	.....	−1,853,866
Total, exclusive of Postal Service, payable from postal revenues	3,823,111,547	.....	4,032,129,742	.....	+209,018,194

that in the House these bills were referred, not to the committee on labor and education, but to the judiciary committee. The public works proposal was indeed reported and passed on July 1, but was

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still in conference when the session closed. It had been so amended in committee—at "the instigation of the President," said Senator Wagner—that the latter called it an "empty shell." The employment service bill was reported on June 26, but did not move further. "Inexplicable," said Senator Wagner, in reviewing Mr. Hoover's attitude in earlier years and the present silence of the White House. There is ground for replying that optimism was the proper note after the new year. Besides, Mr. Hoover, pursuing a theory of delegated responsibility, has been as reluctant as any president to intervene publicly in behalf of particular legislation.

The employment situation stimulated talk of more rigid restriction of immigration, as well as of schemes that might take account of changing economic needs, but no concrete embodiment of the latter idea in statutory terms made any progress.[31] Legislative activities centered in the proposal to bring Mexico under the quota system, which advanced further than in any preceding session, passing the Senate on May 13 by a vote of 51 (24 Republicans, 27 Democrats) to 16 (13 Republicans, 2 Democrats, 1 Farmer Labor) and securing a favorable report in the House.[32] In the course of its consideration it served as the vehicle on which it was sought unsuccessfully to load various purposes—selection within quotas, the prohibition of all immigration for a term of years, the restriction of Philippine immigra-

[31] In his regular message, the President said: "I have been opposed to the basis of the quotas now in force and I have hoped that we could find some practical method to secure what I believe should be our real national objective: that is, fitness of the immigrant as to physique, character training, and our need of service."

[32] S. 51, the Harris bill, which originally proposed to bring all Central and South American countries within the quota system, but was amended to apply only to Mexico. It was passed in the face of State Department disapproval, reiterated in a statement on August 5, which said: "The immigration of Mexicans into the United States has been reduced so drastically during the past sixteen months that it is no longer a problem. The result has been accomplished through strict law enforcement measures put into effect by American government officials. . . . ." *U. S. Daily*, August 6, 1930. S. 51, amended by inserting administrative features from the Box bill (H. R. 12382), was reported by the House committee on May 23 (H. Rept. 1594). Previously, on March 13, the committee had reported a bill (H. R. 10343, H. Rept. 898) which proposed quotas for all countries of the western hemisphere based upon the number of citizens of the United States departing for permanent residence abroad.

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tion, of Canadian immigration, but especially the repeal of the national origins provision.[33]

The Challenge of Prohibition. Much was heard of themes which directly or through political osmosis derive their pungency from the prohibition controversy. For the first time since national prohibition was established, hearings of unrestricted range were held under the auspices of the House. Wets and drys were constantly before its committee on the judiciary from the middle of February until the last week in April. Nor was material lacking for the front pages of the metropolitan dailies thereafter, since the sub-committee on lobbying of the Senate judiciary committee was busy with the question from April until June 19, when the Senate was told that it was the sense of the embarrassed and divided sub-committee "that it should not insist on answers to questions propounded to Bishop James Cannon, Jr. . . . ."[34] The aggressive mood of prohibition's enemies in Congress, as well as their distance from control of the situation, were alike illustrated at a meeting on May 14 when they agreed to circulate a petition to invoke the rule for the discharge of committees in order to secure a vote in the House on 2.75 per cent beer and a national referendum on prohibition.

So far as immediate legislation is concerned, such talk streams against the wind. The concrete measures considered in the recent session were either dry or hardly controversial. A special message from the President on April 28 stressed the need of various items in a program for the strengthening of bureaus, courts, and prisons. The measure for the transfer of the Bureau of Prohibition from the

[33] In committee of the whole on April 21, Senator Norbeck's amendment for the repeal of national origins was adopted by a vote of 39 (28 Republicans, 10 Democrats, 1 Farmer Labor) to 34 (14 Republicans, 20 Democrats). It was coupled with a proposal to cut the quota percentage from 2 to 1½. In the Senate on April 24, however, the repealing clauses were stricken out by 37 (17 Republicans, 20 Democrats) to 36 (26 Republicans, 9 Democrats, 1 Farmer Labor). The bill, after being recommitted, was stripped of all but provisions relating to Mexico.

[34] *Lobby Investigation.* Hearings before a sub-committee of the committee on the judiciary, United States Senate, 71st Congress, pursuant to S. Res. 20. The testimony of the executive officers of the Association Opposed to the 18th Amendment appears especially at pp. 3829-4128 (April 16-25); of representatives of the Anti-Saloon League, at pp. 4279-4642 (May 8-22). The recalcitrancy of Bishop Cannon on June 5 and 11, which the sub-committee voted on June 12 to condone on the ground of irrelevance of questions relating to campaign activities in 1928, is dealt with in S. Rept. 43, part 10.

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Treasury to the Department of Justice was approved in both houses without a record vote.[35] Additions were made to the judicial personnel,[36] and a group of enactments of permanent significance in the development of national penal institutions were passed.[37] The full program of the President's national commission on law observance and enforcement was not ready, but, after delay due to differences of opinion in the House judiciary committee, several brief measures favored by the commission were moved with the aid of a special rule. One of these (H. R. 9985) passed both houses, but was in conference at the session's close. It dealt with penalties in connection with national prohibition, and proposed to amend the proviso in the Jones Act by substituting a more exact basis for the differentiation of casual or slight or habitual or commercialized violations.[38] The other related measures passed the House and were favorably reported in the Senate. The gist of one of these (H. R. 10341, the "Christopherson bill") was in the statement that "petty offenses may be prosecuted upon information or complaint"[39] Another (H. R. 12056, the "Moore bill") related to the waiving of jury trial in criminal cases.[40] Still another item in the commission's plan passed the House but was not reported in the Senate. This bill (H. R. 9937) embodied the more controversial proposal to relieve the federal courts by summary action

[35] H. R. 8574, passed in the House on Feb. 8, in the Senate on May 14, approved May 27, Public No. 273. An amendment offered by Senator Tydings (Md.) proposing to require that the formula for industrial alcohol should be made non-poisonous was defeated, 19 (10 Republicans, 9 Democrats) to 54 (34 Republicans, 20 Democrats).

[36] Additional circuit judges were provided in the fifth and third circuits (Public Nos. 326, 327), additional district judges in the Minnesota district, southern district of California, and southern district of Florida (Public Nos. 276, 447, 449), and two additional judges each for the supreme court and the court of appeals of the District of Columbia (Public Nos. 390, 391).

[37] See below, p. 937.

[38] Popularly called the "one gallon bill." On the motion to recommit in the House on June 3, the vote was 67 to 195; but only 29 asked for the yeas and nays. In an amended form, the bill passed the Senate on July 2 without a division.

[39] The division at the time of passage on June 3 was 181 to 48, with no record vote.

[40] The vote on June 3 was 228 (150 Republicans, 77 Democrats, 1 Farmer Labor) to 108 (53 Republicans, 55 Democrats). It may be noted that H. R. 5266, approved May 29, Public No. 287, though it related also to waiving jury trial, dealt with a relatively unimportant procedural change in civil cases.

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by United States commissioners. The vote by which it was passed, on June 4, was 218 (161 Republicans, 56 Democrats, 1 Farmer Labor) to 117 (44 Republicans, 73 Democrats).[41]

Meanwhile, Congress was engaged in an altercation regarding the future of the commission on law observance and enforcement, in which it was not easy to distinguish dry land and sea. On May 2, in a letter to the Speaker, the President asked that another $250,000 be appropriated, with the unexpended balance, to continue the inquiry. The item was stricken from the second deficiency bill on a point of order. The Senate inserted a provision for $50,000 only, and that for an investigation to be confined to prohibition enforcement. On July 2, however, a special rule was adopted in the House to obviate points of order, and the whole amount was restored by a vote of 273 (187 Republicans, 85 Democrats, 1 Farmer Labor) to 41 (11 Republicans, 30 Democrats). The Senate concurred in this by 37 (31 Republicans, 5 Democrats, 1 Farmer Labor) to 22 (5 Republicans, 17 Democrats).

The Gauntlet of the Veto. In its response to vetoes Congress showed a combativeness that recalled the long session of the 70th Congress. Even the usually dependable succor of the House organization did not always guard the President against being overridden. In the course of the session, four measures were returned with what is called a message veto, and of these one was repassed and became law.[42] In addition, three minor bills succumbed to the pocket veto.[43] One deserves comment. It does not disturb the student of politics that a bill extending the time allowed for the building of a bridge should be disapproved, but when he observes that the pocket veto was impossible because the ten-day period happened to expire while Congress was in

[41] The prohibition controversy was indirectly involved in the bill to establish a combined border patrol (H. R. 11204) passed July 1 by a division, without a record vote, 181 to 52.

[42] H. R. 2029, for coins to commemorate the Gadsden purchase, vetoed April 21, the attempt to repass the bill failing on April 22, 96 to 243; S. 476 regarding Spanish-American war pensions, vetoed May 28, but repassed on June 2, becoming Public No. 299; H. R. 1198, authorizing the United States to be made a party defendant in a suit by Oregon regarding the title to land and water rights in Malheur Lake, vetoed on June 6; and H. R. 10381, amending the Veterans Act of 1924, vetoed on June 26, for which another bill was substituted.

[43] S. 1909, extending the time limit for a bridge over the Rio Grande at Weslaco, passed by the Senate on November 14 and by the House on December 11; and S. 3853, presented to the President on July 3, and H. R. 2782, presented on July 1—both private relief bills.

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Christmas recess, can he wholly applaud, in its practical outcome, the doctrine recently endorsed by the Supreme Court?[44]

The fact that the successful attempt to override the President's objections involved increases in the pensions of veterans of the Spanish-American war illustrates how long it takes the lengthening shadow of a war to reach its full breadth.[45] The majorities by which the bill (S. 476) was repassed on June 2 were not close: in the Senate, 61 (28 Republicans, 32 Democrats, 1 Farmer Labor) to 18 (all Republicans); in the House, 298 (184 Republicans, 114 Democrats) to 14 (all Republicans).

The other vetoed veterans' bill involved the larger, very complicated question of relief for the service men of the World War. From the start, even the House was out of hand, and the combination that shaped the bill in committee and passed it in the House on April 24, 324 to 49, was not of the leaders' making. The President expressed himself, perhaps tardily, stating grave objections on grounds both of inequity and cost. The Senate nevertheless passed the bill on June 23, somewhat reduced, by a vote of 66 (33 Republicans, 32 Democrats, 1 Farmer Labor) to 6 (all Republicans). A veto was assumed. To hasten matters, the House concurred in the Senate amendments and sent the bill to the President. Meanwhile, a substitute measure was hastily agreed upon in consultation with the Administration. The next step was to present it to the Republican conference. On the basis of the virtual pledge received from the President and the pledge given to the majority members, the rest was easy, so far as the house was concerned. The attempt to repass the vetoed bill failed by a vote of 182 (45 Republicans, 136 Democrats, 1 Farmer Labor) to 188 (185 Republicans, 3 Democrats). The substitute (H. R. 13174), though strange to a large part of the membership, passed quickly, under suspension of the rules, by 365 to 4.[46] The Senate, perforce, took it,

[44] Okanogan Indians v. U. S., 279 U. S. 655, 73 L. ed. 894 (1929), enunciating the principle that "no return can be made to the House when it is not in session as a collective body and its members are dispersed."

[45] The bill carried graduated increases of 20 to 30 per cent, accompanied by a reduction of the minimum length of service necessary from 90 to 70 days. The additional cost was said to approximate $12,000,000 annually. The President vetoed it on the ground of the reduction of the service period, the fact that it departed from the principle of excluding awards for disabilities due to "vicious habits," and his belief that personal need as well as disability should be a requirement.

[46] For the specific purpose of making it possible to pass H. R. 13174 im-

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but amended it in the direction of somewhat higher rates.[47] Conference followed; the Senate conferees receded in large degree; and in the closing hours the conference report was accepted by both houses. There is a kind of humor in the fact that the final bill, although less expensive under the rates agreed upon, sought to be more inclusive and was nearer to a system of pensions (as distinguished from compensation for disabilities traceable to the war) than was the original bill—a fact that is of interest as the average age of the great body of World War veterans approaches forty.

The Statutory Accretion.[48] At the cost of some repetition, and with no purpose beyond furnishing a clue to recent statutory changes, a list of the relatively important new laws is set down baldly. The grouping is convenient, rather than logical; the order is not significant.

(1) In the fiscal field, the temporary measure of tax reduction (H. J. Res. 133, approved Dec. 16, Public Resolution 23) and the ostensibly permanent tariff (H. R. 2667, approved June 17, Public No. 361) have already been mentioned.

(2) In the field of post-war financial adjustments, the outstanding

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mediately after receiving the veto message, without amendment, a rule (H. Res. 271) was adopted on June 26, by 228 to 139, providing: "that it shall be in order, beginning on Thursday, June 26, 1930, until the end of the present session of Congress, for the speaker to recognize members for motions to suspend the rules."

[47] The most important amendment was adopted by a vote of 37 (9 Republicans, including both progressives and regulars, 27 Democrats, 1 Farmer Labor) to 26 (all Republicans). The bill itself passed by a vote of 56 to 11. The conference report was adopted in the Senate by 48 (35 Republicans, 12 Democrats, 1 Farmer Labor) to 14 (6 Republicans, 8 Democrats) and in the House by 194 (191 Republicans, 3 Democrats) to 117 (7 Republicans, 109 Democrats, 1 Farmer Labor).

[48] In point of quantity of legislation, a level seems to have been reached, at least temporarily. In the special session, 5,824 items—bills and resolutions of various kinds—were introduced; in the second session, 8,223. The total, 14,047, is properly compared with the number of proposals introduced in the first session of the 70th Congress, 14,750. In the special and second sessions, 927 public and private laws and resolutions were passed, compared with 993 in the first session of the preceding Congress. Considering the second session alone, 883 items were passed, of which 518 were public laws, 84 public resolutions, and 281 private laws and resolutions. In point of origin, 570 were House bills, and 55 were House joint resolutions; 228 were Senate bills, 30 were Senate joint resolutions. In the course of the second session, the House committees reported 1,918 items, of which 1,403 were acted upon, leaving 515 pending at the session's close. Congress was actually in session 156 days.

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enactment (H. R. 10480, approved June 5, Public No. 307) authorized an agreement which (said the committee) "will be the first agreement between the United States and Germany for the liquidation of Germany's treaty obligations on account of (1) reimbursement to the United States for the expenses of its army of occupation, and (2) payment of the awards entered by the Mixed Claims Commission . . . . on behalf of the United States government and its nationals" (H. Rept. 1089).

(3) The prolific question of veterans' relief, touched upon elsewhere,[49] yielded a balanced brood in which care was taken of a number of wars. The most important act (H. R. 13174, approved July 3, Public No. 522) made numerous amendments in the World War veterans' act of 1924, notably in sec. 200, where provision was made for disability of twenty-five per cent or more "not acquired in the service during the World War." Another act (S. 476, passed over the President's veto, Public No. 299) increased pensions of the veterans of the war with Spain. Still another (H. R. 12013, approved June 9, Public No. 323) further liberalized allowances to survivors of the Civil War and their widows.

(4) Administrative reorganization was not dealt with as a whole, but specific changes of some importance were made. (a) The President was authorized to consolidate in an establishment to be known as the Veterans Administration, headed by an Administrator paid $12,000 annually, all activities relating to relief, including the former Bureau of Pensions, the National Home for Disabled Volunteer Soldiers, and the former Veterans Bureau (H. R. 10630, approved July 3, Public No. 536). (b) The "Prohibition Reorganization Act of 1930" (H. R. 8574, approved May 27, Public No. 273) set up in the Department of Justice a Bureau of Prohibition, headed by a director appointed by the Attorney-General, leaving in the Treasury Department the remnant of the former prohibition bureau, now called the Bureau of Industrial Alcohol. (c) Another act (H.R. 11143, approved June 14, Public No. 357) created a Bureau of Narcotics in the Treasury Department, abolishing the Federal Narcotics Control Board, and provided for coördination with the Division of Mental Hygiene (formerly the narcotics division) in the Public Health Service. (d) The principle of reorganization through coördination, rather than amalgamation,

[49] See p. 934.

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characterized an important act (H. R. 8807, approved April 9, Public No. 106) which dealt with personnel and other relations in the public health activities of the government. (e) The Power Commission was reorganized, to consist of five commissioners appointed by the President with the consent of the Senate, for overlapping terms, at salaries of $10,000, and with authority to constitute the necessary staff (S. 3619, approved June 23, Public No. 412).

(5) Penal institutions received noteworthy attention. (a) A Bureau of Prisons, in charge of a director appointed by the Attorney-General, at a salary of $10,000, was provided for in the Department of Justice (H. R. 7832, approved May 14, Public No. 218). (b) Two additional institutions were authorized, one (in the northeast) to be of the penitentiary type and the other (west of the Mississippi) to be for "the confinement of young offenders" (H. R. 6807, approved May 27, Public No. 270); and arrangements were outlined for creating a hospital for defective delinquents (H. R. 7410, approved May 13, Public No. 201). (c) A single, full-time Board of Parole replaced the many existing boards (H. R. 7413, approved May 13, Public No. 202). Another act amended the probation system (H. R. 3975, approved June 6, Public No. 310). (d) It was directed that medical work in federal prisons should be handled through detail by the Public Health Service (H. R. 9235, approved May 13, Public No. 203). (e) A policy for diversification of employment and for training was sketched (H. R. 7412, approved May 27, Public No. 271). (f) Broadening a responsibility that the logic of federal relations had already caused the Department of Justice to take over, a Division of Identification and Information was formally established in the Bureau of Investigation to collect criminal identification records and to exchange them with the "authorized officials of governmental agencies, of states, cities and penal institutions" (H. R. 977, approved June 11, Public No. 337).

(6) In the field of civil service, the long-delayed, necessarily technical measure liberalizing various features of the retirement act was at last passed (S. 15, approved May 29, Public No. 279), and changes were made in some salary rates under certain grades as provided for in the classification act (S. 215, approved July 3, Public No. 523).

(7) In the face of a growing postal deficit, there are interesting implications in the requirement that the cost of various extraordinary expenditures (free services, air mail losses, extra costs in using vessels

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of American registry) shall be separately classified (S. 3599, approved June 9, Public No. 316).

(8) Changes in radio law were confined to some alterations in the system of appeals from decisions of the Radio Commission (H. R. 12599, approved July 1, Public No. 494).

(9) In connection with naturalization, the chief interest attached to the amendment to the act of 1922 (The Cable Act, so-called), intended to make recovery of citizenship by married women still easier (H. R. 10960, approved July 3, Public No. 508).

(10) Agriculture evoked, amid much amendatory legislation, several acts sufficiently distinctive to warrant separate mention. (a) On the regulatory side, an elaborate statute, cited as the Perishable Agricultural Commodities Act, undertook to regulate in interstate commerce the marketing of fresh fruits and vegetables, live and dressed poultry, and eggs (S. 108, approved June 10, Public No. 325). Control under the act of 1906 was amended in regard to the standardization of canned goods (H. R. 730, approved July 8, Public No. 538). (b) Equality for agriculture, in patent law at least, was sought in the establishment of a system of plant patents, including "the exclusive right to asexually reproduce the plant" (S. 4015, approved May 23, Public No. 245). (c) The work of the Department of Agriculture abroad was dignified, and policies for the expansion of its personnel laid, by the establishment of the Foreign Agricultural Service (H. R. 2152, approved June 5, Public No. 304). (d) Relief in the form of funds from which individual loans can be made (secured by crop liens or not, in the discretion of the Secretary of Agriculture) was given in connection with the 1930 crop to the farmers of fifteen states, storm-stricken in 1929 (S. J. Res. 117, approved March 3, Public Res. No. 47), and enlarged funds for the Porto Rico Hurricane Relief Commission were authorized (S. J. Res. 118, approved Jan. 22, Public Res. No. 33).

(11) Forestry was favored, on the one hand, by an act (S. 3531, approved June 9, Public No. 319) that provided for more extensive tree-planting operations in national forests (including the authorization of appropriations which after 1934 may amount to $400,000 annually); and, on the other, by the renewal of authorized appropriations for the purchases on eastern watersheds under the act of 1911 (H. R. 10877, approved June 2, Public No. 298).

(12) The Rio Grande compact, signed by Colorado, New Mexico,

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and Texas on February 12, 1929, was consented to (S. 3386, approved June 17, Public No. 370), and advance authority was given to Oklahoma and Texas to make agreements regarding bridges over the Red River (H. R. 7968, approved April 10, Public No. 110).

(13) Federal aid to states held its ground in the renewal, for the fiscal years through 1933, of the act for the rehabilitation of persons disabled in industry (H. R. 10175, approved June 9, Public No. 317).

(14) In the varied subject of public works, earlier paragraphs have dealt with legislation for roads (notably H. R. 5616, approved April 4, Public No. 90), for buildings (especially H. R. 6120, approved March 31, Public No. 85), and for waterways (H. R. 11781, approved July 3, Public No. 520).

(15) Seldom, if ever, has a single session seen a larger variety of items of a developmental character, cumulatively full of meaning to the philosophy of government. Some have already been treated. Following are others, set down of necessity without comment, but with a sense of their significance as a mass: provision for a National Institute of Health (S. 1171, approved May 26, Public No. 251); for a five-year construction program for the Bureau of Fisheries (H. R. 7405, approved May 21, Public No. 240); for the establishment of a national hydraulic laboratory in the Bureau of Standards (H. R. 8299, approved May 14, Public No. 219); for the modernization of the Naval Observatory (H. R. 9370, approved June 11, Public No. 343); for the construction of a Forest Products Laboratory (S. 3487, approved April 15, Public No. 128); for the incorporation, with partly governmental personnel, of a Textile Foundation (H. R. 9557, approved June 10, Public No. 329); for the extension of the National Museum (S. 3970, approved June 19, Public No. 392); for the building of an annex to the Library of Congress (H. R. 8372, approved June 13, Public No. 354), and for the acquisition by the Library, at a cost of $1,500,000, of a notable collection of incunabula.

Legislation in Suspense. The solution in which congressional legislation slowly takes form and settles is always so freighted that it is impossible to select the matters which are crystallizing. It is enough to indicate, in addition to items of unfinished business already touched upon, a few measures that are of outstanding interest.

Progress was made by the federal motor carrier bill (H. R. 10288, popularly called the "bus bill"), with its significant plan for utilizing

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joint-state boards as federal agencies. Having passed the House on March 24 by a vote of 219 (178 Republicans, 41 Democrats) to 115 (30 Republicans, 84 Democrats, 1 Farmer Labor), it was first reported in the Senate on April 14. There was enough opposition, however, to prompt a minority report signed by Senator Dill and four others. On June 25, by a vote of 30 (12 Republicans, 18 Democrats) to 27 (19 Republicans, 7 Democrats, 1 Farmer Labor), the bill was displaced as the unfinished business of the Senate.

Legislation looking toward railroad consolidation, beset by suspicion, hardly advanced at all. Instead, on May 21, the Senate passed a joint resolution (S. J. Res. 161) to suspend the authority of the Interstate Commerce Commission to approve consolidations until March 4, 1931.[50] In the House, a substitute resolution was reported but not acted upon. The investigation of railroad ownership and control, authorized by the House on January 24, was said to be pointing toward early legislative action on consolidation matters.

Muscle Shoals was more tightly tied than ever, but in such a way that the issue must be at once renewed. On April 4, the Senate again accepted Senator Norris's plan (S. J. Res. 49) for public operation through a Muscle Shoals Corporation of the United States.[51] The majority was substantial: 45 (18 Republicans, 26 Democrats, 1 Farmer Labor) to 23 (21 Republicans, 2 Democrats). In the House, the military affairs committee to which it was referred was a somewhat different body from that which had approved the same measure in 1928. The committee rewrote the resolution by inserting what was called the Reece plan, providing for a presidentially appointed commission which would negotiate a fifty-year lease of the property before December

[50] The vote was 46 (23 Republicans, 22 Democrats, 1 Farmer Labor) to 27 (20 Republicans, 7 Democrats). So active was the alarm regarding a possible Northern Pacific Great Northern merger that a group in the House, with its focus in the Minnesota delegation, talked of filibustering against adjournment unless S. J. Res. 161 was passed.

[51] In pressing his case regarding Muscle Shoals, Senator Norris was aided by being able to draw heavily upon the hearings before the sub-committee investigating lobbying pursuant to S. Res. 20., especially the testimony in February and March of Chester H. Gray, representative of the American Farm Bureau Federation, and of C. H. Huston, long connected with the Tennessee River Improvement Association, and chairman of the Republican National Committee. See S. Rept. 43, parts 7 and 9 (May 21-22). The hammering that followed the hearings caused Mr. Huston to yield the party chairmanship to Senator Fess of Ohio.

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1, 1931. This scheme was approved on May 28 by a vote of 197 (156 Republicans, 41 Democrats) to 114 (35 Republicans, 78 Democrats, 1 Farmer Labor). Thus, in hopeless disagreement, the measure went to conference.

The bill for the regulation of the issuance of injunctions in labor disputes (S. 2497), having passed from the hands of a friendly subcommittee into the whole committee of the judiciary, was first referred to the Attorney-General by a vote of 8 (6 Republicans, 2 Democrats) to 4 (3 Republicans, 1 Democrat). When he declined to comment, the committee was tied for a time, 7 to 7. On June 9, the bill was reported to the Senate accompanied by a majority report, which was unfavorable, and a favorable minority report signed by seven members (3 Republicans, 4 Democrats).

To these important questions that will await the new session, the problem of the Philippines was added, when on June 2 an independence bill was favorably reported (S. 3822, S. Rept. 781, pts. 1 and 2).[52]

Investigations. The investigative functions of Congress happily require less defense than formerly. The Administration, particularly, has had small grounds for irritation. Thus far, the really biting lines of inquiry pursued by Congress, touching such matters as campaigning and lobbying, have amounted to self-examination on the part of Congress rather than departmental inquests.

In three important instances, Congress put money for inquiries in the hands of the President and left him free to determine the means. In one of these, $50,000 was provided for an investigation "of the conditions in and a study of the policies relating to Haiti" (H. J. Res. 170, approved February 6, Public Res. 37). A commission appointed by the President sailed on February 25. In another instance an appropriation of $50,000 was authorized "to cover any expenses which may be incurred by the President, through such methods as he may employ, in making a study and report on the conservation and administration of the public domain" (H. R. 6153, approved April 10, Public No. 107).[53] The third instance was the appropriation of

[52] Palpable support for independence was being gained in the United States because of the desire to curtail importations like sugar and to cut off Philippine immigration.

[53] In the House, this measure elicited as near an approximation of a party vote as roll-calls in Congress come, except in matters like organization. It passed on January 24 by 243 (225 Republicans, 18 Democrats) to 107 (1 Republican,

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$250,000, together with the reappropriation of an unexpended balance, "for continuing the inquiry into the problem of the enforcement of the prohibition laws of the U. S., together with the enforcement of other laws."[54]

Two inquiries were entrusted to congressional joint commissions. In one case, a commission was constituted, to consist of four members from each house and six members of the cabinet, in order "to study and consider amending the Constitution of the United States to provide that private property may be taken for public use during war and methods of equalizing the burdens and to remove the profits of war."[55] In the other case, a joint committee was set up to recommend readjustments of pay and allowances of commissioned and enlisted personnel in the various branches of the government (S. J. Res. 7, approved Feb. 3, Public Res. 36).

In the Senate itself, four new investigations were put in the hands of select committees: campaign expenditure (S. Res. 215);[56] post office leases (S. Res. 244); the replacement and conservation of wild life (S. 246); and the operation, economic situation, and prospects of the Alaskan Railroad (S. Res. 298). Of the investigations which were to be conducted by the standing committees or sub-committees thereof,

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105 Democrats, 1 Farmer Labor). In the Senate it slipped through on the consent calendar.

[54] See above, p. 932.

[55] H. J. Res. 251, approved June 27, Public Res. 98. While in the House, Huddleston's amendment was adopted, 123 to 120, providing "that said commission shall not consider and shall not report upon the conscription of labor." The Senate struck out the words, "without profit," after the phrase, "may be taken for public use." On June 20, the House concurred, 190 (172 Republicans, 17 Democrats, 1 Farmer Labor) to 117 (12 Republicans, 105 Democrats).

[56] It was stated that the resolution applied "to candidates and contests before senatorial primaries, senatorial conventions, and the contests and campaign terminating in the general election, November, 1930." The select committee was constituted of Nye (N.D.), chairman, Goldsborough (Md.), Patterson (Mo.), Republicans; and Wagner (N.Y.) and Dill (Wash.), Democrats. During the primaries it busied itself especially in Pennsylvania, Illinois, and Nebraska.

[57] Speaking for the sub-committee of the Senate committee on the judiciary to investigate lobbying pursuant to S. Res. 20, passed in the special session, Senator Caraway, its chairman, said on June 13 that he "had no reason to believe further witnesses will be called." The sub-committee of the committee on naval affairs, which, pursuant to S. Res. 114, was to review the activities of W. B. Shearer, published hearings but tendered no report. Its chairman, Senator

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there were three renewals of inquiries already under way:[57] a general survey of Indian conditions; consideration of the need of additional national parks; and the cession of lands by Mexico. Four were new: and concerned the adjustment of federal aid for roads, with reference to untaxed Indian lands; the consolidation of railroads; a complete survey of the national and federal reserve banking systems; and treaties with China. Apart from investigations by its own instrumentalities, and without including requests to the Tariff Commission, the Senate adopted 17 resolutions asking information from various executive officers.

Even in the uninquiring House, four investigations were ordered. Two matters were to be dealt with by select committees—communist propaganda[58] and campaign expenditures.[59] In addition, the commerce committee was directed to report on holding company control of railroads, and the banking committee to study "group, chain, and branch banking."

The Senate as Council: Appointments. If the session had held no other point of interest, the scrutiny to which the President's nominations to the Supreme Court were subjected would have rendered it noteworthy. This is not the place to argue the significance of the Senate's attitude; a bare recital must suffice. The nearly simultaneous deaths of Chief Justice Taft and Justice Sanford presented the President with a double problem.

When, almost immediately, Charles Evans Hughes was nominated as Chief Justice, a surprising resistance developed, which was still spreading when, after four days of discussion, the nomination was forced to a vote on February 13. Mr. Hughes was confirmed by 52 (38 Republicans, 14 Democrats) to 26 (11 Republicans, 15 Democrats). Under the circumstances, the outcome was probably inevitable; but the

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Shortridge, was quoted as saying on June 14 that Shearer was only an observer, and besides he sought parity. The sub-committee of the committee on post offices and post roads, having looked into the sale of federal offices in certain southern states pursuant to S. Res. 42, submitted its report on March 15 (S. Rept. 272).

[58] H. Res. 220. "An American resolution," said the chairman of the rules committee, when it passed on May 22, by a division of 210 to 18. The Speaker appointed to it Fish (N.Y.), chairman, Nelson (Me.), Bachmann (N.J.), Republicans, and Driver (Ark.) and Eslick (Tenn.), Democrats.

[59] H. Res. 258, approved June 24. The committee was to deal with the general election only. It was provided, explained Mr. Snell, in case "an abnormal situation develops during the campaign."

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President might have read a warning in the Senate's willingness to concern itself with the social philosophy of judicial candidates.

When in place of the late Justice Sanford, the President offered John J. Parker of North Carolina, judge of the circuit court of appeals, opposition spread rapidly and was reflected in the committee on the judiciary, which reported adversely on the nomination by a vote of 10 (6 Republicans, 4 Democrats) to 6 (4 Republicans, 2 Democrats). Hostility to Mr. Parker on the ground of his attitude as a politician toward negro participation found an ally in the criticism of his record as a judge in connection with labor problems;[60] the defense, on the other hand, was weakened by the fact that it was not easy to establish Mr. Parker's preëminence as a lawyer. After almost continuous debate between April 28 and May 7, Judge Parker's name was rejected by a vote of 39 (29 Republicans, 10 Democrats) to 41 (17 Republicans, 23 Democrats, 1 Farmer Labor).[61]

The Senate as Council: the London Treaty and the Special Session.[62] The treaty for the limitation and reduction of naval armaments was signed on April 22 and was given to the Senate on May 1.[63] On

[60] In an extremely confusing interplay of forces, it seems incontestable that at the outset the most active element was the National Association for the Advancement of Colored People, which called attention to an alleged statement by Mr. Parker (never denied by him) when gubernatorial candidate in 1920: "The participation of the negro in politics is a source of evil and danger to both races and is not desired by the wise men of either race or by the Republican party of North Carolina." Frank Kent went so far as to say in the *Baltimore Sun* of April 28: "His rejection—if he is rejected—will be due solely to negro fear of regular Republican senators who have to vote openly. . . . ." Labor's grievance was voiced in a prepared statement presented by President Green of the American Federation of Labor and printed in the *Record* of April 29. It stressed the complaint that in the case of Lewis v. Red Jacket Consolidated Coal Company, 18 F (2d) 839, Judge Parker "went far beyond the doctrines laid down by the Supreme Court of the United States in the Hitchman case.

[61] On May 20, the appointment of Owen J. Roberts was confirmed.

[62] In addition to the naval treaty, nineteen treaties and conventions were ratified in the course of the second session.

[63] Hearings were held during May by the foreign relations committee, as well as by the naval affairs committee, whose chairman became a prominent, if not effective, critic of the treaty. The foreign relations committee reported the treaty favorably on June 23, without amendment or comment. Two minority reports were submitted. One was an individual report by Senator Shipstead, basing disapproval upon the Senate's failure to receive all the documents (S. Rept. 1080, part 1). The other, prepared by Senator Johnson (Calif.) and signed by Sena-

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May 23, the President announced formally that if the treaty was not disposed of in the regular session he would immediately call the Senate in special session for the purpose. On May 26, at an inconclusive conference of Republican senators, it was evident that the legislative program must be put first. A round-robin signed by twenty-three senators was circulated petitioning that the treaty be allowed to go over to a special session in November; but a score of supporters of the Administration (who saw that time was likely to work against the treaty) put their names to a pledge that adjournment would not be allowed to occur unless an immediate special session was assured. The strain during the closing days of legislative work was relaxed by the announcement that the Senate would meet in July. On July 3, a proclamation was issued convening a special session on July 7.[64]

The chief impediment was the wrangle over the so-called secret documents. The trouble arose while the treaty was still in committee. On June 6, Secretary Stimson declined to send various papers for which the committee asked, saying that ratification of the treaty must "be determined from the language of the document itself, and not from extraneous matter." A resolution was adopted in the committee on June 12 stating "that this committee dissents from such doctrine and regards all facts which enter into the antecedent or attendant negotiations of any treaty as relevant and pertinent .... and .... asserts its right to have full and free access to all records." The President promptly countered by declaring: "There is not one scintilla of agreement or obligation of any character outside the treaty itself." On June 17, the committee, by a vote of 14 to 4, declined to approve Senator Johnson's proposition that the treaty should be held until the requested papers were transmitted. The controversy was carried to the floor of the Senate, centering in a resolution offered by Senator McKellar. On July 10, an amendment to this resolution, adding the words "if not incompatible with the public interest," prevailed by a vote of 38 (32 Republicans, 6 Democrats) to 17 (8 Republicans, 9 Democrats). The resolution then passed, 53 to 4—the latter all Democrats.

It was at this point that Senator Norris introduced the reservation

tors Moses (N.H.) and Robinson (Ind.)—all Republicans—was submitted on June 30 (S. Rept. 1080, part 2).

[64] The Senate was actually in session on twelve days, aggregating nearly sixty-nine hours spent wholly in discussion of the London treaty.

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that cut the knot. It stated, in part, that "in ratifying said treaty the Senate does so with the distinct understanding that there are no secret files, documents, letters, understandings, or agreements which in any way, directly or indirectly, modify, change, add to or take away from any of the stipulations, agreements, or statements in said treaty." This reservation was unanimously agreed to on July 19. Then, shaking off other reservations by decisive majorities, the treaty was ratified on July 21 by a vote of 58 (40 Republicans, 18 Democrats) to 9 (7 Republicans, 2 Democrats).[65] The struggle to hold a quorum, not easy amid heat and the preliminary congressional battles of a year notable for both, was at last over.

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Literacy and the Electorate. *Expansion and Contraction of the Franchise.* Between the theory and practice of the American Revolution there was a wide breach. The ruling caste of property owners retained control in spite of the legendary democratization of that era. Jefferson's declaration of the equality of man was not fully applied to suffrage requirements until the time of Andrew Jackson. Since then, suffrage restrictions of property, color, and sex have suffered the fate of houses built upon sand. The floods of democracy have now smitten upon these limitations for more than a century. In the rise of the common man, both the property-owning and taxpaying qualifications for voters disappeared even in the original commonwealths. Once these restrictions which separated the old aristocracy from the new proletariat had been vanquished, the requisites of color and sex were likewise abandoned.

With few exceptions, suffrage had been granted to practically all adult male white citizens before the Civil War. Yet counter-attacks were waged by the advocates of a limited electorate. The theory prevails that a steady swing toward universal suffrage characterizes the American franchise. The pendulum has also swung in the opposite direction. Connecticut and Massachusetts, where the reaction against

[65] Those in the negative were: Bingham (Conn.), Hale (Me.), Moses (N.H.), Robinson (Ind.), Pine (Okla.), Oddie (Nev.), and Johnson (Calif.), Republicans, and Walsh (Mass.) and McKellar (Tenn.), Democrats. The largest vote cast for any of the defeated reservations was 11 (6 Republicans, 5 Democrats). Regarding the talk of clôture, see above, p. 917.

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suffrage extension was rapid, were the first states to retrench on the policy of adult male white suffrage. In place of property qualifications, literacy restrictions appeared.[1] The purpose of these restrictions set up by Connecticut in 1855 and Massachusetts in 1857 was to bar the ignorant immigrants from the voting class.[2]

In the period of Reconstruction the color line was supposedly eradicated by the Fifteenth Amendment. The futility of granting to the newly emancipated slaves the right to vote has since been demonstrated. The resulting disorder stands as a precedent against wholesale granting of political power to an unpropertied and illiterate class.

The breakdown of the old property wall in Massachusetts and Connecticut had been followed by the hasty adoption of literacy tests aimed at the unlettered immigrants. The South, confronted with the problem of legal elimination of the negro vote, turned likewise to the literacy test, as well as other requirements. An inflated electorate goes the way of an inflated currency.

No such reaction succeeded the enfranchising of women in 1920. This testifies to the sagacity and sanity of that step. That the most educated woman could not vote while the most illiterate negro might cast a ballot was an unjustified anomaly.

For the most part, the great triumvirate of suffrage restrictions has disappeared. With the exception of the Southern states, property, color, and sex no longer separate the voters and pariahs. Is some other line of demarcation necessary? In politics, as in all else, we rarely stand still. We can hardly increase the voting class today unless we enfranchise aliens, paupers, criminals, and lunatics. Enfranchisement, if carried further, would become a *reductio ad absurdum*. Nor is it reasonable to regard the present state of the suffrage as the millenium.

To what extent has the broadening of the suffrage brought into being a more intelligent and politically-minded electorate? Has the voting class gained in quality as well as quantity? Fortunately, our attempt to stretch the voting class with little regard for the break-

[1] Conn., *Public Acts* (1851-54), pt. 4, p. 138; Mass., *Acts and Resolves* (1856-57), p. 852.

[2] Cf. G. H. Haynes, "Educational Qualifications for the Suffrage in the United States," 13 *Pol. Sci. Quar.* 496 (1898), and his article on "The Causes of Know-Nothing Success in Massachusetts," 3 *American Historical Review* 75 (1897-98).

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ing point of democracy has been accompanied by a comprehensive program of public education.

In spite of all efforts, an unleavened mass of illiterates remains in the United States. The ballot in the hands of these illiterates is an uncertain means of making the United States safe for democracy. Lord Bryce, with all his acumen, declared: "The voter who cannot read a newspaper or the election address of a candidate is ill equipped for voting."[3] In answer to this statement, radio enthusiasts can now point to the national broadcasts of campaign speeches. Granted that the radio will make individual decipherment of the speeches less essential, there still remains the need for literacy in casting the ballot.

Simultaneous with the continued extension of the right of suffrage, there has appeared a new means of retrenchment—the state literacy test. This is the new hope for those who maintain that the vote should be a privilege to be accorded only to those who can exercise it for the common good. Yet, no one after observing the administration of a modern state literacy test by a registration clerk would conclude that it is a panacea for all the evils that beset our electorate. If a man can mumble through five lines of a state constitution before registering, therein lies no proof that he will vote as a well-informed and far-seeing citizen.[4] In fact, it might be asked,

[3] *Modern Democracies* (1921), I, 71.

[4] One of the stock methods of administering the literacy test outside the Southern states is in operation in Massachusetts. The applicant for registration draws a pasteboard slip from a box. He must read the five lines printed on the slip and write his name in a register (Mass., *Acts and Resolves* (1894), chap, 291. sec. 1). New Hampshire has substantially the same requirement, except that the voter must, in addition, write one of the lines printed on the slip (N.H., *Pub. Laws* (1905), chap. 53, sec. 1; in *Primary and Election Laws* (1926), at p. 4). The method of testing literacy in Oregon is much like that of Massachusetts (Oregon, *Laws* (1923), chap. 126 at p. 183). However, in Oregon the county clerks, deputy county clerks, and judges of election boards do not have to put the test unless an applicant is challenged by an elector or they have reasonable cause to suspect illiteracy (*Ibid.*). Connecticut, the first state to adopt the literacy test, now requires that every person prior to registration must "read at least three lines of the constitution or of the statutes of this state, other than the title or enacting clause, in such manner as to show that he is not prompted, nor reciting from memory" (Conn., *Laws* (1925), chap. 57, sec. 1). Maine stipulates that an applicant for registration must read "in the English language, other than the title, so much as may be necessary from an official edition of the constitution in such a

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not how far does illiteracy disqualify a man to vote, but rather how far does literacy qualify him. Says Lord Bryce: "How far does the ability to read and write go towards civic competence? Because it is the only test practically available, we assume it to be an adequate test. Is it really so?"[5]

The literacy test may not be a panacea, but at least it is practical. A test of civic competence before admitting an individual to the electorate, even if desirable, is not feasible. Granting that such a test could be drawn up, who would administer it with fairness to all? Would it not appear to the Republican giving the test that civic competence rested with those well versed in the principles of Lincoln, Roosevelt, and Hoover? Would it not appear to the Democratic administrator that civic competence was well embodied in those who had faith in Cleveland, Bryan, and Wilson? A test of political sagacity administered by political yet neutral judges exists only in the minds of the visionaries. Perhaps in Coleridge's Pantisocracy such would have been expedient. In this day, the reading and writing test comes closer to political reality.

In times gone by, it has often been argued that illiteracy does not preclude political acumen, while literacy may be accompanied by a vast obtuseness in things political. More than sixty years ago, Senator Hendricks described the intelligence and political capacity of the illiterates of the Northwest. He claimed that they acquired information from one another, from attendance at meetings, and participation in jury duty.[6] Today, however, when our political intercourse is carried on to such a large extent by the printed page, the in-

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manner as to show that he is neither prompted nor reciting from memory." He must also enter his name on the register (Maine, *Qualifications and Registration of Voters* (1925), sec. 15 at p. 6). In Arizona, the voter must be able "to read the constitution in the English language in such manner as to show that he is neither prompted nor reciting from memory, and to write his name" (Ariz., *Election Laws* (1928), sec. 14 at p. 5). In California, the applicant "must sign a statement that he can read and write, or that he is qualified by reason of other provisions in the law" (J. P. Harris, *Registration of Voters in the United States* (1929), p. 203). Washington requires that the applicant furnish satisfactory evidence that "he is capable of reading and speaking the English language so as to comprehend the meaning of ordinary prose" (Wash., *General Election Laws* (1927), sec. 17 at p. 7).

[5] *Modern Democracies* (1921), I, 71.

[6] *Cong. Globe*, 39th Cong., 2nd Sess., pt. 1, p. 104.

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competence of the illiterate is apparent. The modern voter who cannot read is poorly equipped for his task.

Literacy Tests and the Know-Nothing Movement. To many people, the literacy test for voters means only a Southern expedient to keep the negroes from the polls. This is not half the story. The first literacy tests in the United States were adopted in Connecticut and Massachusetts. One of the most recent and most successful experiments with the literacy test is that of New York. A test which has found favor in many Northern states, which has been used by Italy and Portugal, and which has found widespread acceptance in South America is not merely a Southern detour to avoid the Fifteenth Amendment.

The literacy test is not a fad of the modern generation. It is now almost four-score years old. Samuel Jones, a God-fearing citizen, insisted in 1842 that the leading principle to be kept in view in granting the right of suffrage was the public good. While he did not favor the requirement of a high degree of education, he did maintain that a voter "ought to be able to read and write with facility, so that he may inform himself, by study of the structure of our government, and of the principles of our constitutions; and so that he may learn from the common publications of the time, the condition and wants of the country; and so that he may write his own ballot at an election, or at least so that he may learn his whole duty, and the retributions which await the performance or non-performance of it, in the oracles of divine truth."[7]

Samuel Jones was not alone in sponsoring this test for voters. It soon ceased to be an esoteric fancy and became an exoteric fact. The reading and writing qualification first emerged in the political arena in the New York constitutional convention of 1846. The cohorts of democracy joined in greeting the newcomer with shouts of derision and ridicule.[8] Certainly no member of that convention would have prophesied that within nine years this insignificant and aristocratic proposal to restrict the electorate would find favor in Connecticut. Why was the literacy test, scorned by the New York convention of

[7] *A Treatise on the Right of Suffrage* (1842), pp. 132-133.

[8] Delegate Simmons proposed a literacy test for voters. He was reminded that:

"A little learning is a dangerous thing;
Drink deep, or taste not the Pierian spring."

(N.Y. Const. Conv. (1846), pp. 820-823.)

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1846, speedily adopted by the Connecticut legislators of 1854 and 1855? The answer, briefly, is that Connecticut was the first state to comprehend the possibilities of the literacy test in discriminating against immigrants.

At a popular referendum in 1855, the voters of the Nutmeg State set up as part of their fundamental law that every person, before being admitted as an elector, must be able to read any article of the constitution or any section of the statutes of the state.[9] The amendment was swept into the constitution by the rising tide of Know-Nothing agitation against the foreigner. Some newspapers attacked the proposal as undemocratic. This "miserable tribe of low, hack, partisan, demagoguic, hollow, hypocritical democrats," said the *Connecticut Courant*, "would give the state into the arms of foreigners, or drunkards, . . . or irresponsible grog-shop scoundrels and poor-house rum-blossoms."[10] The press does not afford the only example of the strength of the Know-Nothings in Connecticut in this period. It was the Know-Nothing group in the Assembly of 1855 that secured the second passage of the literacy amendment and its submission to the electorate.[11]

While the Nutmeg literacy test was aimed at the foreigners, it failed to effect their political demise. The solons who drafted the reading test failed to stipulate that voters must be literate in the English language. Unforeseen practices soon developed. In one town, voters were admitted only after examination on a Hebrew translation of a clause of the state constitution. In Hartford, many men were declared voters because they could read from an Irish translation of the constitution drawn up by a local Irish politician popularly known as "the king."[12] As Shakespeare warned, a politician is one who would circumvent God. A venerable registrar in a Connecticut town reports that he at one time possessed a handbook of translations of the Connecticut constitution used in the examination of foreign-born applicants. He facetiously remarked that he "picked up" enough German in the corner saloon to examine those who elected

[9] Conn., *Public Acts* (1851-54), pt. 4, p. 138.

[10] Sept. 22, 1855.

[11] Cf. G. H. Haynes, "Educational Qualifications for the Suffrage in the United States, "13 *Pol Sci. Quar.* 496 (1898).

[12] For an account of the humorous practices that developed, see J. J. McCook, "Venal Voting: Methods and Remedies," 14 *Forum* 172 (1892-93).

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to be tested in that tongue. To remedy these abuses, Connecticut adopted a further literacy amendment in 1897, stipulating that electors must be literate in the English language.[13]

The same wave of "Americanism" that effected the adoption of the Connecticut test of 1855 also brought about the Massachusetts reading and writing requirement of 1857. Irish immigrants began to pour into the Bay State after the potato famines. In 1860, of the 260,106 foreign-born in Massachusetts, 185,434, or seventy-one per cent, had emigrated from Ireland.[14] In fact, no higher mathematics is needed to prove that in 1860 fifteen per cent of the entire population of Massachusetts had been born in Ireland. Had the Irish remained inactive politically, or had their votes been scattered, the situation would not have been so acute. They, however, became extraordinarily forward and united in the political affairs of their adopted country. In those early days, "the Irish vote went solidly to the Democrats, and for the first time in many years gave them a fighting chance in the struggle with the Whigs, . . . [and the] imperilling of Whig success carried with it, doubtless, the conclusion that the welfare of the state was seriously endangered."[15]

Not long after the action of Connecticut, the Massachusetts Senate, which was "largely composed of members elected by the Native American Party itself," took the literacy test under advisement. This Senate was, in the language of the *Boston Daily Advertiser*, a body with "an almost sublime faith in the statesmanship of men born in this country and an almost cowardly distrust of those who . . . made a pilgrimage of thousands of miles to reach it."[16] By March 30, 1856, both the Senate and the House of the General Court had concurred in a literacy test amendment to the constitution.[17] In the House, a bare two-thirds majority was achieved by the combined votes of Native American and Whig members. A contemporary newspaper speaks of ten Boston Whig members voting for "this precious farrago of Know-Nothing nonsense."[18] With the

[13] Conn., *General Statutes* (1902), p. 58 (Amendment 29).

[14] *Eighth Census of the United States, Population* (1860), p. 508.

[15] G. H. Haynes, "The Causes of Know-Nothing Success in Massachusetts," 3 *American Historical Review* 75 (1897-98).

[16] Feb. 21, 1856.

[17] *Boston Daily Advertiser*, March 31, 1856.

[18] *Ibid.*, March 15, 1856.

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exception of those already having the right to vote, those sixty years of age, and those physically disabled, this amendment required a voter to be able to read the state constitution in the English language, and to write his name.[19] The amendment was passed again by the legislature of 1857 and submitted to the people in the same year. The *Boston Herald* warned the voters that the amendment was "aimed, as has been boldly avowed, against that class of foreigners who are presumed to be Catholics, and proceeds upon the impudent assumption that large numbers of them are unable to read and write. . . . . But the amendment reaches farther and strikes deeper. It reaches every emigrant from Protestant European states."[20] Notwithstanding the *Herald's* warning, the popular referendum favored the literacy test by a vote of 23,833 to 13,746.[21]

Literacy Tests for the Negro. Two New England states set the precedent for the use of the literacy test to discriminate against racial groups. Following their action, the reading and writing qualification lapsed into obscurity until its rejuvenation by the South. Albert Bushnell Hart, writing in 1892, considered the educational test an important mental disqualification, which, unfortunately, had not yet been widely adopted.[22] "Illiterate persons were in 1880," he noted,

[19] Mass., *Acts and Resolves* (1856-57), p. 852.

[20] April 29, 1857. As Kirk H. Porter has written, "It was the ignorant, poverty-stricken, famished, unwashed Irish Catholic rowdy whom the country may thank for bringing forth literacy tests. . . . They originated practically for the benefit of the Irishman." *Suffrage in the United States* (1918), pp. 118-119.

[21] Official figures certified by E. H. Redstone, state librarian, Massachusetts.

[22] While the literacy test was not put into effect in any other state from 1857 to 1890, it was nevertheless under consideration. Missouri, in 1865, adopted a reading and writing test to take effect in 1876 (Mo. Conv. (1865), *Journal,* p. 261). But the constitutional convention of 1875 abolished it (Mo. Conv. (1875), *Journal,* vol. 1, p. 350.) A literacy test for the voters of the District of Columbia was proposed by Senator Dixon of Connecticut in 1866. This, of course, was never adopted (*Cong. Globe,* 39th Cong., 2nd Sess., Senate; Dec. 12, 1866; pt. 1, p. 84.) Before the Fifteenth Amendment went into effect on March 30, 1870, the literacy test was debated in the constitutional conventions of Alabama, Virginia, Georgia, South Carolina, and Florida. In Florida alone was it adopted; and even in this state it never went into effect. A futile attempt was made to incorporate a reading and writing test into the Louisiana constitution in 1879 (See Ala. Const. Conv. (1867), *Journal,* p. 45; Va. Const. Conv. (1867-68), *Debates and Proceedings,* vol. 1, p. 461; Geo. Const. Conv. (1867-68), *Proceedings,* pp. 279-282; So. Car. Const. Conv. (1868), *Proceedings,* pp. 825-832; Fla., *Const.* (1868), Art. XIV, sec. 4; La. Const. Conv. (1879), *Journal,* p. 309.)

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"excluded only in Massachusetts and Connecticut. The effect was to debar from suffrage about 35,000 persons. The clause of the new Mississippi constitution requiring the voter to be able to read the state constitution, or to give a reasonable interpretation of it when read to him, is likely to be a model for other states, and thus to increase this kind of disfranchisement."[23]

How quickly this constitutional provision of Mississippi proved a model for other Southern states is now known to every student of the suffrage problem. The educational test, no longer in eclipse, became a very effective means for the control of the negro vote. The action of Mississippi in 1890 was followed by that of South Carolina in 1895, Louisiana in 1898, North Carolina in 1900, Alabama in 1901, Virginia in 1902, Georgia in 1908, and Oklahoma in 1910.[24]

[23] "The Exercise of the Suffrage," 7 *Pol. Sci. Quar.* 312 (1892).

[24] The constitution of Mississippi required that after January 1, 1892, "every elector shall . . . be able to read any section of the constitution of this state or he shall be able to understand the same when read to him or give a reasonable interpretation thereof" (Miss. Const. Conv. (1890), *Journal*, p. 676). The South Carolina literacy test required the applicant to "read and write any section of the constitution submitted to him or her by the registration officer." There was an alternative tax-paying clause (So. Car., *Const.* (1895), Art. II, sec. 4, par. c, d, and e). The Louisiana provision of 1898 required the registering voter to make, under oath, a written application in the English language or his mother tongue. An alternative $300 property clause and a temporary grandfather clause rounded out the qualifications (La., *Const.* (1898), Art. 197, sec. 3, 4, 5). In 1921 Louisiana made a good character and understanding clause also an alternative to the literacy requirement (La., *Const.* (1921), Art. VIII, sec. 1, d). In North Carolina, the applicant for registration must be able "to read and write any section of the constitution in the English language" (No. Carolina, *Const.*, Art. VI, sec. 4 (as amended in 1900). Of course there was a temporary grandfather clause for the whites. As for Alabama, the literacy test stipulating that voters be able to read and write any article of the constitution in the English language was combined with a clause calling for regular employment (Ala., *Const.*, Art. VIII, sec. 181). There was a temporary old soldier clause and another alternative—the $300 property qualification. Virginia stipulated that the person seeking registration must "make application to register in his own handwriting, without aid, suggestion or memorandum, in the presence of the registration officers. . . ." Until 1904, temporary alternatives were established, namely, an old soldier clause, an understanding clause, and a property qualification (Va., *Const.* (1902), Art. II, sec. 19, 20). Georgia demanded ability to read in English a paragraph of the United States constitution and to write the same when read by a registrar. A temporary grandfather clause was incorporated. Other alternative qualifications were an understanding clause and a property requisite (Geo., *Laws* (1907), pt. 1, title 3, no. 124, par. 4). Oklahoma in 1910 called for ability to read and write

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Within two decades eight Southern states attested the popularity of the literacy test as an instrument to disfranchise the negroes legally. Parallel with the reading and writing tests for voters, many Southern states set up temporary grandfather clauses, practical expedients to exempt illiterate whites from the literacy stipulation. Oklahoma's combined literacy test and grandfather clause proved to be the last straw. The declaration of its unconstitutionality by the Supreme Court followed.[25]

The Struggle for a Scientific Literacy Test in New York. The extension of the literacy test since the action of Massachusetts in 1857 has not been limited to the southern regions alone. For sundry causes, it has found acceptance both in the East and the West, having been adopted in Wyoming in 1889, Maine in 1892, California in 1894, Washington in 1896, New Hampshire in 1902, Arizona in 1913, New York in 1921, and Oregon in 1924.[26] Among these states, New York has taken the most advanced steps by entrusting the administration of the literacy test to school authorities rather than registration and election officials as is done in other states.

A constitutional amendment providing that voters must be able to read and write English was passed by the legislature of 1920.[27]

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any section of the Oklahoma constitution, with a permanent grandfather clause as an alternative (Okla., *Primary and Election Laws* (1913), p. 1). This was declared unconstitutional in Guinn and Beal v. U.S. (1915, 238 U.S. 347).

[25] The suffrage requirements enacted by Southern states from 1890 to 1910 have been so often reviewed in standard treatises that the subject is dismissed in this summary manner.

[26] The specific provisions may be found as follows: Wyo., *Const.* (1889), Art. VI, sec. 9; Maine, *Const.*, Amendment 29; Cal., Amendment to Art. II, sec. 1, in Heming, *Constitution of California* (1899) at p. 113; Wash., Amendment to Art. VI, sec. 1, in Remington, *Compiled Statutes of Washington,* vol. I, p. 131; N.H., *Const.*, Art. XII, pt. 1; Ariz., *Acts* (Special Session, 1st legislature, 1912), chap. 83, sec. 1; McKinney, *Consolidated Laws of New York,* book 2, p. 25; Oregon, Amendment to Art. II, sec. 2, in Oregon, *Laws* (1923), p. 495.

[27] A literacy test was first proposed in New York in the constitutional convention of 1846 (N.Y. Const. Conv. (1846), p. 820). Such a requirement was introduced also in the convention of 1867-68 (N.Y. Const. Conv. (1867-68), *Proceedings and Debates,* p. 491). It was resurrected in the convention of 1894, where it was vigorously opposed by the Democratic members of the committee on suffrage (N.Y. Const. Conv. (1894), *Record,* vol. II, p. 713). Again it bobbed up in the convention of 1915. On this occasion, "Al" Smith, argued: "If the ability to write one's name is a test of good citizenship, there are hundreds of men in Mr. Osborne's home for wayward men on the Hudson able to qualify, for not only have

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The specific terms of this amendment to Article II, Section 1, of the constitution provided that: "After January 1, 1922, no person shall become entitled to vote by attaining majority, by naturalization, or otherwise, unless such person is also able, except for physical disability, to read and write English; and suitable laws shall be passed by the legislature to enforce this provision."[28] In the Assembly of the 1920 legislature the Republicans had a puissant majority; in the Senate a safe one.[29] Similarly, the legislature of 1921, which added its approval to the literacy amendment, was distinctly Republican. This session was marked by the complete domination of the Republican governor, N. L. Miller. It was sometimes called "Miller's Mill."[30] Submission of the literacy test to the people on November 8, 1921, resulted in its adoption by a vote of 896,355 to 632,144.[31]

The first year of the administration of the New York literacy test was not altogether happy. The legislature provided in 1922 that a new voter might either present to the board of inspectors a certificate of literacy signed by the principal of a public school or submit to an examination by the election board.[32] Within less than a year this law was deemed a failure. The easier means to the ballot was by way of the election officials. This way was "generally sought by the illiterate foreigner and the politicians."[33] Some inspectors assumed that the imposition of a literacy test was optional. In a number of districts of New York City no literacy test was imposed on new voters.[34] This abuse of power by the inspectors was soon remedied by subsequent legislation.

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they proved their ability to write their own names but the names of others" (*New York Tribune*, Aug. 26, 1915). Ranged behind Smith, "the Democrats almost to a man stood solidly against the proposal" (*Ibid.*).

[28] McKinney, *Consolidated Laws of New York*, book 2, p. 25.

[29] The figures were: Assembly, 109 Republicans and 36 Democrats; Senate, 30 Republicans and 21 Democrats. Cf. *New York Tribune*, Nov. 6, 1919.

[30] See *New York Times*, April 18, 1921.

[31] New York State, *Legislative Manual* (1929), p. 826.

[32] New York, *Laws* (1922), chap. 588, sec. 166. The State Board of Regents was given the power to draw up rules governing the issuance of literacy certificates. If the new voter elected to be examined by the election board, he must read a constitutional extract of fifty words and write ten of the words legibly.

[33] Editorial, "Triumph of the Literacy Law in New York," *Educational Review*, vol. 67 (1924), p. 40.

[34] This was reported by Deputy Attorney-General A. S. Gilbert. Cf. N.Y. State Assoc., *State Bulletin*, vol. III, no. 3, p. 5.

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The New York State Regents Literacy Test. Under the law of 1923, the sole authority to make rules and regulations governing the issuance of certificates of literacy was granted to the educational authorities through the State Board of Regents. A new voter might present as evidence of literacy either a certificate of literacy issued under the rules of the Board of Regents or a diploma showing that he had completed the work of an approved eighth-grade elementary school, or of a higher school in which English was the language of instruction. Determination of the genuineness of the certificate or diploma and the identity of the voter was left to the election officials.[35] Litigation followed, and the Court of Appeals upheld this law. Granting of the power to issue literacy certificates to educational authorities alone was held to be a reasonable measure in view of the possible lack of impartiality in election boards. It was not a delegation of legislative power.[36]

Henceforth, election boards might not compete with school authorities in the administration of the literacy test. The future administration rested with the State Board of Regents. The state commissioner of education, Dr. Frank P. Graves, appointed a committee to draw up appropriate tests. The members of this committee had been or were engaged in teaching educational psychology or measurement. The instructions for taking the test are very specific, and the test below is a fair sample.

[35] N.Y. *Laws* (1923), chap. 803, sec. 166. The text of this law is as follows: "A certificate of literacy issued to a voter under the rules and regulations of the Board of Regents of the state of New York to the effect that the voter to whom it is issued is able to read and write English, or is able to read and write English save for physical disability, which shall be stated in the certificate, shall be received by election inspectors as conclusive of such fact except as hereinafter provided. But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work of an approved eighth-grade elementary school or of a higher school in which English is the language of instruction. But the genuineness of the certificates and the identity of the voter shall remain questions of fact to be established to the satisfaction of the election inspectors and subject to challenge, like any other fact relating to the qualifications of a voter. The inability of a voter, save for physical disability only, obvious to the election inspectors, to write his name in a poll book or register, shall be deemed conclusive proof of inability to read and write English, notwithstanding the presentation of proof of literacy as herein provided."

[36] People v. Voorhis, 236 N.Y. 437 (1923).

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Instruction for the Test

(To be read aloud by the examiner)

"On the other side of this paper is a test to see whether you can read and write English. It is a paragraph like this one you are reading now. Below it are some questions like those you see below this paragraph. When you turn over the paper, the first thing to do is to read the paragraph. Next, read the first question. Then, go back and read the paragraph until you find the answer to this question. When you find the correct answer, write it on the dotted line after the first question. You do not have to answer in a complete sentence unless you want to. Usually, one or two words will be enough for your answer to the question. Write the answer as plainly as you can, for this is a test of both reading and writing. Answer all the other questions in the same way. When you have answered every question, read the paragraph and all your answers over again. This is to make sure that you have made no mistakes."

New York State Regents Literacy Test

Read this and then write the answers. Read it as many times as you need to.

"Mary had been waiting for the Fourth of July. It was on this day that her father and mother were going to take her to the park. Because it was a holiday her father did not have to work. Mary had learned in school why we celebrate the Fourth of July. The Declaration of Independence was signed on July 4, 1776. It was written by Thomas Jefferson. It is called the Declaration of Independence because it declared the thirteen American colonies free from England. The Fourth of July is celebrated as a national holiday by all of the forty-eight states."

(The answers to the following questions are to be taken from the above paragraph.)

1. For what day had Mary been waiting?
2. Where were her father and mother going to take her?
3. Why did Mary's father not have to work?
4. Where had Mary learned why we celebrate the Fourth of July?
5. When was the Declaration of Independence signed?
6. Who wrote the Declaration of Independence?
7. From what country did the Declaration of Independence declare the thirteen American colonies free?
8. How many states celebrate the Fourth of July as a national holiday?

These tests were from the first, and still are, prepared by a group of educational psychologists working in conjunction with the state education department. All the members of this New York Literacy Commission, as it is designated, are, or were at some time, teaching educational psychology in New York State. Unlike the usual form of reading and writing examination in the United States, the Regents test requires ability to read with understanding and to write with comprehension. All the tests are similar in that they are about one hundred words in length. The words in the literacy tests are taken from the list of 4,000 words prepared by Alfred E. Rejall and au-

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thorized by the Regents as the basis of a course of study for non-English-speaking adults. The tests approximate the reading ability of a fifth-grade pupil in the New York State public schools. They center about such topics as America, Americanization, American history and government, citizenship and naturalization, civic duties and institutions, industries and occupations, international relationships.[37]

Each test is rated according to a scoring key which gives correct and incorrect answers. Any answer judged equal to the worst one called correct in the key is accepted. Complete sentences are not required. Errors of grammar or spelling are overlooked if they do not indicate actual misreading.[38] The object is to test the ability of candidates to read and write in a comprehending manner. The number of correct answers for passing credit is stated on each scoring key. The number of incorrect answers allowed without preventing passing corresponds to the number of incorrect answers that the median child in the upper fourth or lower fifth grade in the public schools of New York State gave on each test when it was tried out experimentally. The number of questions ranges generally from seven to ten. "All the persons who fail to pass the examination may take one subsequent examination in each year at one of the regularly specified times set for examinations."[39]

All new voters, i.e., all persons who became qualified to vote in New York State on or after January 1, 1922, must present evidence of literacy.[40] This does not mean that all new voters must subject themselves to the literacy test. Taking this is only a last resort for those who can present no other acceptable proof of their literacy. Under the law of 1923, a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work of an approved eight-grade elementary school or of a higher school in which English is the language of instruction. Without examination,

[37] This summary is based on the instructive and interesting analysis of the New York procedure by Alfred E. Rejall, "A New Literacy Test for Voters," reprinted from *School and Society*, vol. XIX, no. 479, March 1, 1924.

[38] University of the State of New York, *Bulletin No. 911* (Nov. 1, 1928), p. 15—"Regulations and Directions Governing the Issuance of Certificates of Literacy and Conduct of New York State Regents Literacy Test." This is the official bulletin issued to superintendents and examiners. (Hereafter cited as *Bulletin No. 911.*)

[39] *Bulletin No. 911*, p. 14.

[40] *Ibid.*, p. 11.

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certificates of literacy are issued by school superintendents to applicants whose credentials show that they have successfully completed either the work prescribed for the sixth grade of the public schools of the state or a course in reading and writing English equivalent to that required of sixth grade pupils. To those physically disabled, a special rule applies. They must satisfy the examiner that they could pass the literacy test if it were not for such disability. Failing any of these options, the only method of obtaining a certificate is by the actual passage of the literacy test.[41] In accordance with these rules, city, village, and district superintendents issue certificates of literacy.

Great has been the work of the state department of education in issuing certificates. For the period of registration and election day, 1928, superintendents issued certificates to 29,833 who presented day school credentials and to 3,602 with evening school credentials. The literacy test was passed by 116,760 candidates; it was failed by 13,104. Thus under the impetus of the election campaign, 129,864 persons altogether actually took the reading-writing test. Of this total, some ten per cent were unsuccessful. In the work, 4,701 examiners were required and 2,802 different buildings. The smooth and non-partisan conduct of these tests was a distinct achievement. The traditional literacy test of Massachusetts and other states administered by election officials pales by comparison. The fact that 13,104 examinees failed the test does not mean that ten per cent of the potential new voters in New York could not pass a simple literacy requirement. It means simply that ten per cent of those who lacked other credentials and were forced to take the Regents test failed in the attempt.[42]

The New York State Regents literacy test was a real achievement. It not only provided a new impetus for evening school work among adults, but it also directly linked the state education depart-

[41] *Bulletin No. 911*, p. 9.

[42] State Department of Education, *Administration of the Literacy Law for New Voters* (a statistical table prepared by Dr. A. E. Rejall). As a general rule, 20 per cent of those taking the Regents test have failed, while 10 per cent failed in 1928. This can be explained by the fact that thousands of new women voters, obviously literate, were unable to present eighth-grade or higher diplomas. Owing to the closely contested election in 1928, strict adherence to the letter of the law was maintained. Such new voters were required to take the literacy test and passed with ease.

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ment with the maintenance of an electorate literate in the English language. The administration of the literacy test by election boards has always been open to the charge of partiality, and actual experience in New York demonstrated that the election officials were not enforcing the literacy test satisfactorily. The elimination of this procedure and the granting to educational authorities alone the power to determine literacy was a major accomplishment. Another advance was the overthrow of the traditional type of literacy test. A candidate could no longer enter the ranks of literate voters merely by reading, with or without comprehension, a few lines from the statutes or constitution. The genius of the Regents test lies in the development of a scientific measurement of a candidate's ability to read and write with comprehension in the English language.

By adopting the first literacy test, Connecticut led the way in 1855. Now, New York is blazing a new trail. To Connecticut goes the credit for the initial move, motivated though it was by partisan considerations. To New York falls the honor of the improved reading and writing requisite. The New York State Regents literacy test points the way to more effectual enforcement of a literacy standard for voters.

Conclusion. The literacy test is not a sovereign cure for all our electoral ills, but it is one important remedy. With our present systems of compulsory and adult education, day schools and moonlight schools, it is no injustice to ask the voter to learn the English language. Nor is it a denial of the right to vote. The ballot is tendered upon the fulfillment of a duty which is not onerous but beneficial in its execution. Such is the virtue of the literacy test pursued in and for itself.

In view of our system of public education, the literacy requirement is not a reversal of our democratic principles. Illiteracy will become an increasingly rare phenomenon. Our people have long been accustomed to tests for the practice of law and medicine. These have meant little to the non-professional man. But when the layman took to the automobile, he soon learned that in some states he must show his capacity to drive before receiving his license. These tests did not insure that he would thereafter drive carefully and sanely, but they did free the roads of the utterly incompetent. Similarly, the literacy test will not shield us from corruption. It will not remove from the highways of democracy all reckless voters. But it will sift

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out a large group not capable of marking a ballot intelligently.

In 1920, the United States census listed as illiterate 4,931,905 persons.[43] The validity of these literacy statistics has not been substantiated by other surveys. The Illiteracy Commission of the National Educational Association reported in 1924 that there were ten million illiterates and an additional ten million semi-illiterates.[44] The army tests of 1917 and 1918 were applied to 1,556,011 men and 32,893 officers. Of these, twenty-five per cent were found to be illiterate and an additional five per cent were considered semi-illiterate.[45]

How can this disagreement on the percentage of illiterates in the United States be explained? The answer lies in the divergent definitions of illiteracy. To the United States census-takers, an illiterate was a person who confessed inability to write in any language. In the actual census, no proof was demanded. Mere assertion of ability to write was accepted without any tests. The National Educational Association considered as illiterate all those who could not read and write in the English language. The army tests, as administered in many training camps, required an "ability to read and understand newspapers and write letters home." Obviously, the number of illiterates varies directly with the rigor of the definitions of literacy. But the surveys show us that our public school system is not infallible.

No reasonable man can agree with those alarmists who picture millions of illiterates swinging national elections every four years. There is no proof that illiterates have a class consciousness and group solidarity. The American electorate is not divided along the lines of university graduate *contra* illiterate. The establishment of state literacy tests throughout the country will not detract from the influence of political propaganda upon the common man. He cannot merely touch the garment of literacy and be made whole. The historical panorama of the educational stipulation shows that time and again it was enacted with partisan incentives. Its good effect upon the electorate has often been an afterthought. These malpractices, nevertheless, do not impair the intrinsic merits of the literacy test for voters.

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[43] *Fourteenth Census of the United States* (1920), II, 1246.

[44] *Illiteracy Report of the Illiteracy Commission,* issued by the National Educational Association, July, 1924, p. 13.

[45] National Academy of Sciences, *Memoirs,* XV, 100.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING
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The Progress of Permanent Registration of Voters.[1] *Kentucky.* At its regular biennial session in 1930 the legislature of Kentucky enacted a sound permanent registration law for the city of Louisville. The state has had a permanent registration law for cities since 1922, but with such great defects that voting frauds became prevalent in Louisville, resulting in the setting aside of a municipal election in 1925. No feasible provision was made in the old law for purging the names of persons who had died or moved away. The books became clogged with the names of such persons, which were voted by repeaters.

A sound permanent registration bill was introduced in the 1928 session of the legislature, and, having been passed by an overwhelming vote, was vetoed by the governor near the close of the session when it was too late to pass the bill over his veto. The Louisville League of Women Voters became active immediately after the legislature adjourned, and, with the support of the local newspapers, called upon Mayor Harrison to appoint a special committee to draft a new registration bill, to be submitted to the legislature two years hence. This committee, consisting of the city and county attorneys and two prominent representatives of the party organizations, was appointed by the mayor and proceeded to draft such a bill. Members of the committee visited Milwaukee, Minneapolis, Des Moines, and other cities where permanent registration is in use. A satisfactory bill, providing permanent registration for the city of Louisville, was drafted and received the endorsement of the League of Women Voters, the local newspapers, and the Republican organization. The measure set up a registration commission of two members, appointed upon recommendation of the party organizations, and provided that the first registration should be held in June of this year. The voter is required to register in person, and to sign two looseleaf or card records. Later, the registration office is required to prepare three ad-

[1] For previous accounts of the spread of permanent registration, see this *Review*, May, 1928, pp. 349-353, and November, 1929, pp. 908-914.

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ditional copies, one to be turned over to the Republican and one to the Democratic organization, so that these may maintain their own records of registration. It is unlikely that this feature of the law will work out as anticipated, for it will be extremely difficult for the party organizations to keep their records in agreement with the records in the registration office. No other state has a provision of the kind. The party organizations of Louisville, however, demanded this provision before giving their approval to the bill.

Other provisions call for a cancellation of the registration of voters for failure to vote, the use of death reports, and a periodical house to house check up, as means of keeping the lists correct. The original registration was conducted by precinct officers, but thereafter it is anticipated that registration will be confined largely to the central office. A very important provision, and one which occasioned considerable opposition, is that requiring the voters to sign before being permitted to vote, and a comparison of the signature with that on the registration record. It was objected that Louisville has many illiterate voters who will be unable to sign, but provision is made in the law to take care of such voters by a personal description.

The bill was modeled closely upon the report of the National Municipal League Committee on a "Model Registration System,"[2] and, it is interesting to note, is labeled under its own terms as "The Model Registration Act." It received practically unanimous support in the legislature and was signed by the governor. Another bill, patterned somewhat after it, but with serious modifications, which would have applied to the other cities of the state, was also passed, but was vetoed. If the new law is successful in Louisville, however, it will probably be extended to the other cities of the state at the next legislative session.

California. Permanent registration bills have been defeated at the last two sessions of the California legislature, largely because of the opposition of the county clerks, who at the present time receive a fee of ten cents for each new registration. The printers' lobby has also furnished active opposition. After the close of the legislative session of 1929, J. H. Zemansky, registrar of voters in San Francisco (now retired), and Richard Kerr, registrar of voters in Los Angeles, led a movement to put the issue on the ballot and let the voters of

[2] Supplement, *National Municipal Review*, January, 1927.

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the state vote upon it. A new registration bill, which is a model of brevity and adequate in every particular, was drafted and printed in the form of petitions for submission to a referendum vote. The civic organizations of San Francisco and Los Angeles lent support to the movement, and the principal newspapers endorsed the plan. Early in 1930, a sufficient number of signers had been secured and the petition was filed with the secretary of state to be voted upon this fall.

The proposed permanent registration act provides for a personal registration, signature, and adequate means for purging the lists. The existing registration law in California is excellent in many respects, and only slight changes are necessary to adapt it to a permanent system.[8] The signature at the polls is already required, and the present registration is conducted largely by a house-to-house canvass, reaching the voter at his home. It is convenient to the voter, and no charges of fraud are made; but the system is expensive, and when the voter moves he has to go to the election office and register from the new address. The proposed permanent registration law will greatly reduce the cost and better serve the convenience of the voters.

Other States. At the regular legislative sessions of 1931, permanent registration will be proposed in a number of other states where it has been pushed for the last several years. The Kansas City Public Service Institute will continue its fight for a sound registration law in Missouri, probably expanding the scope to include an entirely new election code. In Illinois, a special election commission was created by the 1929 legislature, and will report recommended changes in the election laws of the state. It is anticipated that permanent registration will be included in its report. The legislature of the state of Washington has passed permanent registration acts at its last two sessions, only to have them vetoed by the governor. It is probable that the matter will come up again. In Pennsylvania, various civic organizations, including the League of Women Voters, have been pushing election reforms for a number of years. Enabling legislation for the adoption of voting machines was passed at the 1929 legislative session, as well as a new and more effective law concerning the recounting of ballots. Other reforms, probably including a permanent registration of voters, with the signature at the polls,

[8] See my "Registration for Voting in San Francisco," *National Municipal Review*, April, 1926.

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will probably be pushed in 1931. The Georgia League of Women Voters will sponsor a permanent registration bill in the 1931 legislative session. It is probable that a bill will be introduced in the next New York legislature to create a special election commission to study various election matters, including permanent registration.

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The Presidential Short Ballot. For years there has been a gradual tendency to make the presidential ballot conform less to the formal legal theory, and more to the actual political practice, of the presidential election. The latest, and perhaps ultimate, step in this evolution, as pointed out by the writer in a prior note in 1923,[1] is to shorten and simplify the ballot by removing the names of the candidates for presidential electors. This newest type of ballot had then been adopted by only two states, Nebraska and Iowa.[2] Since that time, four more states have followed their example: Wisconsin[3] in 1925, Illinois[4] in 1927, Ohio[5] and Michigan[6] in 1929. Thus this type of ballot has now been tested by two states in three presidential elections, and in the election of 1928 by four states having in all 63 electoral votes. It will be used in the next presidential election by at least six states, with a total of 102 electoral votes,[7] or nearly one-fifth of the electoral college.

The two essential legislative provisions for this ballot innovation have to do, first, with the form of the ballot, and second, with the method of giving legal effect to an indirect vote for the electors. The provisions of all six states on these two points are now in harmony, and therefore practically standardized.

The form of the presidential short ballot provided for by the pioneer Nebraska act has not been, and probably will not be, improved upon. It is now uniform in all six states. The names of the persons nomi-

[1] "*The Presidential Ballot,*" in this *Review*, February, 1923.

[2] Adopted by Nebraska in 1917, by Iowa in 1919.

[3] *Laws of Wisconsin, 1925*, ch. 250.

[4] *Laws of Illinois, 1927*, pp. 450-53.

[5] *Laws of Ohio, 1929*, vol. 113, p. 357.

[6] *Public Acts of Michigan, 1929*, no. 306.

[7] This number will doubtless be increased somewhat by the impending reapportionment of congressmen.

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nated by each political party or group as candidates for presidential electors are to be certified to the secretary of state except in Nebraska, where it is to the governor. The Michigan provision for the form of the ballot is typical: "The names of the candidates of the several political parties for electors of president and vice-president shall not be printed on the official ballot. . . . . In lieu thereof the names of the candidates of each political party for president and vice-president shall be printed within a bracket, immediately below the circle in the column of said party, with a square to the left of such bracket."

Nebraska, Iowa, Illinois, and Michigan continue their ballots as they were except for this substitution of the names of presidential for those of electoral candidates. The other two states each had a separate presidential ballot, which is retained by Wisconsin, but abandoned by Ohio. The removal of the long lists of names of the candidates of the different parties for Ohio's twenty-four electors so shortened and simplified the presidential ballot that it has been merged with the state and local ballot.

The Nebraska provision for translating votes for candidates for president and vice-president into votes for their electors through appointment by the governor did not meet with approval, and has been uniformly rejected. The only other act to include this provision was that passed by the legislature of Illinois in 1921 and vetoed by the governor. Such appointment was not only unnecessary, as discovered since, but of very doubtful validity. It appeared positively to conflict with a valid act of Congress that electors "shall be appointed in each state on the Tuesday next after the first Monday in November."[8]

It remained for Iowa, in its act of 1919, to solve this legislative problem of how to leave the names of the candidates for electors off the ballot, and yet provide for their legal choice by the voters on the day fixed by Congress. This was done by the original and ingenious provision that a vote for the candidates of a party for president and vice-president shall legally be regarded and counted as having been cast for the list of candidates of that party for electors.[9] It is doubtful if a better legislative device will be discovered. It has been incorporated as a standard provision in the law of every state having this type of ballot. Nebraska adopted an amendment in 1927 repealing the

[8] *U. S. Compiled Statutes*, title III, sec. 199.

[9] *Laws of Iowa General Assembly, 1919*, ch. 86, sec. 6.

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provision for appointment by the governor and substituting the Iowa provision.[10]

The amendatory act of Wisconsin consists of two very simple and direct provisions on this point. The first directs that the ballot shall bear the following instructions to voters: "Make a cross or other mark in the square opposite the names of the candidates for president and vice-president for whose electors you desire to vote. Vote in *one* square only." The second provides that "in counting presidential ballots, votes shall be counted as having been cast for the electors of the candidates after whose names the voter has made the mark indicating his choice thereof." The Ohio law is also very concise. "A vote for any of such candidates (for president and vice-president) shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state." The provision of both the Illinois and the Michigan statute (the latter modeled on the former) is expressed in both negative and positive terms as follows: "marking a cross in the circle under the party name of a political party . . . . shall not be deemed and taken as a direct vote for the candidates of the said political party for president and vice-president, or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state."

In all six states except Wisconsin the voter may vote for president and vice-president in either of two ways: first, by voting a straight ticket—national, state, and local—by means of a mark in the party circle, or second, by voting a split ticket by means of a mark in the squares before the brackets inclosing the names of the candidates of his choice. In Wisconsin, he votes for the candidates he prefers by means of a separate presidential ballot.

The most obvious result of this ballot change has been a great reduction in the size of the ballot. In Nebraska, the presidential part of the ballot in the last three elections has occupied scarcely a fourth of the space that it did before. In Wisconsin, the separate ballot for 1928 was only about 6 x 8 inches in size, or less than one-fourth its former dimensions. In Illinois, with its twenty-nine electors, the difference was even more marked. Instead of occupying a broad space over a foot wide across the huge general ballot, the presidential ticket

[10] *Laws of Nebraska, 1927*, ch. 105.

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of 1928 formed only a narrow strip less than two inches in width. This reduction in size added greatly to the convenience of the voters and election officials in voting and counting the ballots. While no definite data have yet been gathered, there must have been a considerable saving in expense for the printing of ballots. In Ohio, it will be practically the entire expense of a large separate ballot for the choice of twenty-four electors.[11]

This type of presidential ballot is so clearly superior to every other that it should be adopted by the states generally.[12] The chief obstacle hitherto appears to have been a doubt regarding its constitutionality. This doubt is quite unwarranted. The national constitution unquestionably vests in the legislatures of the states full and exclusive authority to regulate the manner of choosing presidential electors. In the one case involving this question that has come before it, the national Supreme Court sustained this power of the state legislatures in no uncertain terms.[13]

The opinion of Chief Justice Fuller quotes with approval the following from a report by Senator Morton, chairman of the committee on privileges and elections:[14] "The appointment of these electors is thus placed absolutely and wholly with the legislatures of the several states. They may be chosen by the legislature, or the legislature may provide that they shall be elected by the people of the state at large or in districts, ... and it is no doubt competent for the legislature to authorize the governor, or the supreme court of the state, or any other agent of its will, to appoint these electors. This power is conferred upon the legislatures of the states by the constitution of the United States and cannot be taken from them or modified by their state consitutions. . . . . Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated."

[11] On the other hand, the complete separation of the vote for president from that for state and local officials is destroyed. Voters may now vote a straight ticket—national, state and local—with one mark in the party circle. This merging of the ballots will therefore undoubtedly increase the influence exerted by the national upon the state and local tickets.

[12] For other advantages of this type of ballot not mentioned above, see "The Presidential Ballot," in this *Review*, Feb., 1923, p. 94.

[13] McPherson v. Blacker (1892), 146 U. S. 34-35.

[14] Senate Report, 43rd Cong., 1st Sess., No. 395.

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The conclusion of the court is stated very definitely as follows: "From the formation of the Constitution until now the practical construction of the clause[15] has conceded plenary power to the state legislature in the matter of the appointment of electors. . . . . The appointment and mode of appointment of electors belong exclusively to the state under the Constitution of the United States. . . . . Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes . . . . but otherwise the power and jurisdiction of the state is exclusive, with the exception of the number of electors and the ineligibility of certain persons. . . . ."

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[15] U. S. Const., Art. II, Sec. 1, Clause 2.

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FOREIGN GOVERNMENTS AND POLITICS

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The Sovereignty of the British Dominions[1]: Law Overtakes Practice. It is interesting that this work by Professor Keith, who is acknowledged everywhere to be the most authoritative of the commentators on the constitutional system of the British Empire, should have appeared at the very moment when the Conference on Dominion Legislation and Merchant Shipping Laws began its sittings in London in October, 1929. If it was intended to guide their deliberations, the publication of the Report of the Conference[2] in February, 1930, shows how widely a conservative statement of the existing law and practice will differ from the new structure of Dominion autonomy, once the Report is accepted by the Imperial Conference, by the Parliament in Great Britain, and by the legislatures of the Dominions. For where Professor Keith saw in the "equal status" of the now classic Balfour Report of 1926 only "exaggerated language," "careless phraseology," and "rhetoric," the Conference took this "root-principle" seriously and applied it throughout. As the Conference contained all the most important legal advisers and civil servants of the governments concerned, besides four Dominion ministers, its report will almost certainly be accepted by the Imperial Conference.

The experts recognized only one general principle from Professor Keith's work: that any changes which are to be made in the legal *status quo* in relation to certain subjects would have to be accomplished by acts of the British Parliament. These subjects are: (1) disallowance and reservation, (2) the extraterritorial operation of Dominion legislation, (3) the over-riding powers of British legislation laid down by the Colonial Laws Validity Act of 1865, (4) the right of Great Britain alone to legislate on royal titles and the succession to the throne, and (5) the making of basic changes in Merchant Shipping and Colonial Courts of Admiralty Acts. The acts of Par-

[1] *The Sovereignty of the British Dominions,* by Arthur Berriedale Keith. The Macmillan Company, 1929.

[2] Cmd. 3479 (1930).

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liament covering such subjects would abolish all the past limitations of the powers of the Dominion legislatures, and would be considered the definitive and final renunciation of power over the subjects yielded to the Dominions. In the language recommended for the Imperial Act by the Report: "Be it therefore declared and enacted that no act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof."

Only two exceptions are recommended as reservations to the full and plenary powers of the Dominion parliaments:

1. The right of disallowance is still valid in respect to any Dominion legislation "which appears to the United Kingdom to alter any of the provisions affecting the stock to the injury of the original stockholder" of Dominion public loans raised under the Colonial Stocks Act of 1900. As these loans are afforded the low rate of interest in London because of their being listed under the act of 1900 as trustee securities, into which a large volume of investment is forced by trustee acts, particularly that of 1893, the British government felt justified in insisting on the retention of the right of disallowance of any law which might "involve a departure from the original contract in regard to the stock," either for loans already existing or for those to be raised in the future. The terms of discretion as to what laws might affect colonial stocks might be very wide. Perhaps they give a power of disallowance quite as effective as that which is being surrendered though more dangerous to use.

2. A second exception was made by two somewhat ambiguous declarations which appear at first sight not to be entirely consistent: (a) the right of reservation required by specific provisions in bills dealing with particular subjects—even those dealing with "alterations of a constitution"—is declared "to fall within the scope of the doctrine that it is the right of the government of each Dominion to advise the Crown in all matters relating to its own affairs, and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the government of that Dominion." Discretionary reservation can in most instances be abolished by the Dominions already. The Report recommends that where they "need the coöperation of the Parliament of the United Kingdom

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to amend the provisions of their constitutions relating to reservations, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the government of the United Kingdom should ask Parliament to pass the necessary legislation."

If this is done, it will give the Dominion parliaments power to change their fundamental laws without fear of disallowance or reservation. Yet by a subsequent paragraph of Part V (which deals with the repeal of the Colonial Laws Validity Act and substantive enactments to assure that the acts of the British Parliament shall not extend to a Dominion except by request) the following declaration is recommended: "Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand otherwise than in accordance with the law and constitutional usage and practice heretofore existing."[3]

The omission of the Union of South Africa and the Irish Free State is explained by the fact that both of these constitutions are framed on the unitary principle, and that both include "complete legal powers of constitutional amendment"—although there is a warning proviso that while "in the case of the Union of South Africa the exercise of these powers is conditioned only by the provisions of Section 152 of the South Africa Act, 1909" (requiring a two-thirds majority of both houses acting as a constituent assembly to change the status of either the Dutch or English languages or the terms of the native franchise in Cape Colony), "in the Irish Free State they are exercised in accordance with the obligations undertaken by the Articles of Agreement for a Treaty signed at London on the sixth day of December, 1921."

What is the significance of these exceptions to the rule that the Dominion legislatures are as completely sovereign in the field of legislation as what used to be called by Professor Keith, "the Imperial Parliament?"

[3] Cmd. 3479, p. 23, par. 66. Part v, par. 66, further denies that this proposed act is meant to authorize federal intrusion upon the right of the states or provinces in Australia or Canada. The *status quo* in this respect is to be maintained until a change is requested by the "proper authorities" in the Dominions. In a note accompanying the 1905 act for Canada, Great Britain indicated that these authorities must include the provinces. Quebec has so far blocked any sweeping changes.

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The first exception, which reserves the right of disallowance for any acts violating the terms of the Colonial Stocks Acts, has a wide economic significance, as investment in Dominion public securities is one of the great remaining links of the Empire, along with British banking, shipping, and the British market for Dominion primary produce. The British investor has put nearly three quarters of a billion pounds sterling into these Colonial and Indian Trustee securities, of which the Dominions have raised fully three-fourths. Repudiation has been talked in India quite freely, and it has been feared on economic grounds by Mr. J. M. Keynes in some of the Dominions, notably Australia, because he feels that the artificially low interest secured by the Colonial Stocks Act has led to dangerous over-borrowing.[4]

But it is the constitutional importance of the exception, which Professor Keith has rightly emphasized,[5] that must interest us here. Since it argues a subordination of the Dominion to the British legislature, even though one freely and contractually assumed, the Irish Free State has raised its own loans either in New York or in the Free State, apparently with as much success as the other Dominions do in London, and so has escaped coming under the restrictions of the Colonial Stocks Act. A more interesting, and an unnoticed feature is the light which this reservation throws on the Balfour Report's claim that the governor-general would cease to be "the representative of His Majesty's Government in Great Britain." Presumably it would be the duty of the governor-general to announce to the Dominion that the royal assent has been withheld to any act considered to violate the Colonial Stocks Acts, and to that degree he would still act as a servant of the government of the United Kingdom.[6]

[4] Though he does not single out Australia, it is clear that Australia has sinned most. In the spring of 1930 it became clear that the city of London would not float further loans until Australia set its financial house in order. Sir Otto Niemeyer, of the Bank of England, and Professor T. E. Gregory were accordingly invited to come and prescribe remedies. Radical sections of the Australian Labor party talked repudiation, after the terms of the resulting recommendations were published, declaring that adoption of them by Australia would mean riveting on the chains of British capitalism. Even in official circles there was talk of "scaling down the war-debt" of Australia to the United Kingdom.

[5] *Op. cit.*, Introduction.

[6] The appointment of the governor-general is an interesting example of the mixed nature of the "Crown." Everywhere except in the Irish Free State, which suggests and practically controls the appointment of an Irishman for its governor-

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As a limitation on sovereignty, however, the Colonial Stocks Act is, juridically considered, similar to that which was accepted by Germany under the Dawes Plan. There is at least a technical element of freedom in the acceptance of a servitude in each case. In terms of fact rather than law, the real sanction lies in the power of the City to refuse further loans.

The second reservation as to the retention of the constitutional *status quo* in the federal division of powers in Australia and Canada could only be used against an unconstitutional Dominion act after a court decision. But a decision of what courts? The Canadian and Australian, in the first instance, with a possible appeal in the former to the Judicial Committee of the Privy Council by special leave; in the latter, without any such further appeal, since the Commonwealth has given its High Court complete powers under a permissive section of the Constitution Act of 1900 to deal with all constitutional points concerning the *inter se* divisions of power between the states and the Commonwealth. The Judicial Committee of the Privy Council would also be available in New Zealand for legislation *ultra vires* the Constituent Act to accomplish what can no longer be done by reservation or disallowance. In none of these Dominions is there official sanction for the agitation to abolish the appeal to the Privy Council, in spite of the delay and expense involved.

But the Judicial Committee has ceased, in practice, to hear appeals from the Union of South Africa, and it has been openly defied by the Irish Free State. The latter government has passed nullifying legislation to prevent its decisions, if unfavorable, from being carried out.[7] The Report seems to recognize the unsuitability of the

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general, the practice is for the Dominion Office or the prime minister of the United Kingdom to submit several names to the Dominion concerned, usually with at least one peer. The king's personal influence is often felt in the list, and the Dominions almost invariably choose a peer. Canada is said to have indicated a desire to have Lord Willingdon's name suggested, though it was not on the original list. Mr. Scullin, Labor premier in Australia, recently broke all precedents by announcing that he had advised His Majesty to appoint Sir Isaac Isaacs, the Chief Justice of Australia, to be the next governor-general. So far, no appointment has been made.

[7] First on the appeal in Lynham v. Butler in 1923 (the case was never heard), and lately in the case of Performing Rights Society v. Bray Urban District Council (1930). See Times *Law Reports*, April 19, 1930. No costs have yet been awarded.

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Judicial Committee as at present constituted, with its predominantly British judges, to bear the burden of disputes which will no longer be so much constitutional as international in character. It suggests, therefore, the creation of a new Imperial tribunal, for the *ad hoc* arbitration of disputes between governments of the British Commonwealth, with standing panels of Dominion as well as British judges.[8] This suggestion is clearly aimed at a compromise which will permit the Irish Free State to utilize a court within the Empire rather than to make its effort to secure the right, claimed by its signature of the Optional Clause without reservations, to invoke the Permanent Court of International Justice for its disputes with England. Great Britain and the other Dominions signed the clause, however, with a reservation as to *inter se* disputes aimed at preventing just such action.

As the proposed tribunal's jurisdiction would extend to "justiciable issues arising between governments," it would not apparently supersede the functions of the Judicial Committee of the Privy Council in hearing private appeals by special leave. No doubt this issue, which proved too difficult for the last Imperial Conference,[9] will be settled in the 1930 Conference. But as reservation and disallowance have practically disappeared, the Judicial Committee of the Privy Council itself would be a broken reed to lean upon. Nothing but a constitutional convention, recited in the preamble of the proposed acts, would impose unanimity. In strict law, therefore, the royal prerogative itself might be altered by a Dominion act.

The complicated question of nationality provides more matter for reflection than almost any other of the problems of the new Empire. If the unity afforded by the Crown were only that of a personal union, such as United England and Scotland under the Stuarts, all subjects who were born owing allegiance to the king would be natural-born British subjects under the doctrine of Calvin's Case; and that was also the situation for Hanover, in respect to some at least of a British subject's privileges. [Isaacson v. Durant, 17 Q.B.D. 54, (1886).]

But the naturalization of aliens to be British subjects implies a difficulty. Professor Keith has claimed that the British Nationality and Status of Aliens Act of 1914 was applicable in strict law to all

[8] Cmd. 3479, part VII, par. 125, p. 41.

[9] See Cmd. 2768 (1927).

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the Empire without being re-enacted by the Dominions, though he does not question the "constitutional" propriety of the latter step.[10] Nor does he offer to define the status of those persons who were not covered by Dominion acts until from seven to thirteen years after the passage of the British act. Whatever was the case in the past, it is clear that "legislation based upon common agreement" will be necessary for conferring any common status.[11]

Apparently this leaves the way open for the Dominions to agree that a British act will be competent to change this status, as indeed they may leave everything else with Great Britain by individual voluntary action. But since the trend of practice is already so strongly toward concurrent or reciprocal legislation, any changes will almost certainly require unanimous adoption of the same measures. These, indeed, are recommended in the Report in paragraph 77 for nationality, and 80 for the uniformity of prize law and the coördination of prize jurisdiction. Alteration in the existing law of fugitive offenders, foreign enlistment, and extradition should also be made only after consultation and agreement, wherever the latter is possible.

Newfoundland will cease to figure as a Dominion hereafter in official acts, by virtue of an amendment to the Interpretation Act of 1889, recommended by the Report; so that one more anomaly disappears.[12] In any future changes in the laws governing royal style and titles and the succession to the throne, all the Dominions must agree. This, though it acknowledges equality of interest, practically stereotypes the indivisible crown.[13]

The right to legislate with extraterritorial validity is to be conceded to the Dominions in as full a measure as it exists in the United Kingdom.

In matters affecting merchant shipping legislation and colonial courts

[10] *Op. cit.*, p. 64.

[11] See the Report (Cmd. 3479), part v, par. 76-79, p. 25.

[12] *Ibid.*, part v, par. 81, p. 26. Newfoundland is proud of being "the oldest colony."

[13] *Ibid.*, part v., par. 59-60, p. 21. On his return in May, 1930, to South Africa, General Smuts had the bad judgment to try to force on General Hertzog an interpretation of this agreement on unanimous action for laws on the royal succession, etc., to the effect that it precluded any Dominion from seceding without getting unanimous consent from the others. This aroused General Hertzog to approve an amendment to the Report asserting the right of secession. *London Times*, May 22, 1930.

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of admiralty the Report adopts the same principles as in the questions treated above, though it recognizes the stronger case for uniformity of legislation in these questions. The right of separate legislation is fully recognized, with the assertion that in the interests of uniformity the right must be exercised only after consultation and agreement. Whatever practical difficulties may be involved, international agreements will have to be the means used for dealing with the Dominions. A British "type act," previously agreed upon, will have to serve the same basis as an international convention does, to be accepted or not as each Dominion sees fit. Infallibly that will mean either a divergence of policy or a considerable increase in the range and frequency of consultation and suggests the necessity of an Imperial secretariat more competent than the present Dominions Office.

This Report will, in a way, create a sort of negative constitution for the British Commonwealth. It is at least a Bill of Dominion Rights and a series of limitations upon the British Parliament. Whether or not it is accepted as it stands, one can be certain that the long period during which there was a complete discrepancy between law and practice has come to a close. The negative constitution of the British Commonwealth is beginning to descend from the regions of hushed mystery into the view of the courts. Even the nature of the "common crown" may have to be submitted to analysis. The framework of unity, so far as it is suffered to remain unaltered, will depend upon the sufferance of each of six legislatures instead of one.

Yet the solution envisaged may be a far more workable, even though it is a far less simple and logical, one than that proposed by Professor Keith. It forces the future common interests of the Empire to be reached by international agreement rather than by the largely fictitious retention of an Imperial supremacy now gone forever. In internal matters, it recognizes an equality of legal status like that of a confederation or a league. As the Report itself put it: "The ground is thus cleared for coöperation among members of the British Commonwealth of Nations on an equal basis" in those matters in which practical considerations call for concerted action. This concerted action may take the form of agreements, for a term of years, as to the uniformity of laws throughout the British Commonwealth of Nations, as to the reciprocal aid in the enforcement of laws in jurisdictions within the British Commonwealth outside the territory of the enacting Parliament, and as to any limitations to be observed in the exercise of

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legislative powers. Or, in some instances, certain Dominions may prefer to keep the uniformity secured by the existing forms of British legislation.

In the light of the fact that the Report has still to be adopted, and that it does not touch the constitutional side of international relations, it is interesting to examine at some length Professor Keith's claims in favor of the retention of the Imperial supremacy of the British Parliament as the only possible basis of Imperial unity. His book is not only an excellent historical summary of the Dominions' external relations and their bearing, as well as of Dominion autonomy; it is also a clear-cut statement of the issues which the Imperial Conference of 1930 must face, whether it likes doing so or not—many of which are not covered by the Experts' Report.

According to Professor Keith, the government of the United Kingdom, whatever practical concessions it may make to the Dominions, can never be on a status of equality with them, since the Parliament of Great Britain can never bind its successors. Even should it concede the secession of a Dominion (which it has, he thinks, no constitutional right to do), its successor could bring that Dominion back under Imperial control with all the legal finality of Pitt's Act of Union for Great Britain and Ireland in 1800, which paid scant attention to the "forever" in the British acts of renunciation of control in 1782-1784. As a corollary, not only does the principle upon which the Colonial Laws Validity Act of 1865 rests remain immutable, but the power of disallowance over Dominion acts which contravene existing imperial legislation or their constitutions has not been surrendered in the royal instructions to governors-general. So long as it is retained in principle for any one type of acts, it can be used at need and broadly. And what, he asks, can we expect if the Dominions are to be empowered to endanger the loans guaranteed by Joseph Chamberlain's Colonial Stocks Act? Or to violate the constitutions from which each of their parliaments derives its (legally) limited competence? Here the Conference on Dominion Legislation appears to support him, so far as reservation and disallowance are concerned, on the first problem, but not on the second. Finally, it is clear to Professor Keith that in no single instance, again in the face of the "exaggerated" language of the Balfour Report, can Dominion governments directly advise the king. Any advice to His Majesty must come from the responsible ministers of the British Parliament. The British ministers

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are not merely channels of communication. They are ultimately responsible for every royal act, such as the release of the Great Seal, for the full powers issued to plenipotentiaries, and for the ratification of treaties. The matter has been brought to a concrete issue in Mr. Scullin's attempt to advise the king to appoint Sir Isaac Isaacs governor-general of Australia.

It is clear that these limitations, if they in fact exist and continue to exist, do render affirmations of equality of status somewhat rhetorical. Nor is inequality and subordination made less real by talking of difference of status or of function, on which the latter part of the Balfour Report laid stress. The fact is, Professor Keith thinks, that the Dominions, while enjoying a measure of autonomy over their internal affairs, and the right of separate membership in the League and of legation in foreign capitals, do so on the sufferance of the British Parliament. They may refuse to coöperate in carrying out treaties or in taking an active part in war. But they are legally subject to overriding parliamentary action from Great Britain, as Canada had to admit after refusing to ratify the Lausanne treaty. Finally, the Dominions cannot assert the legal rights of neutrals, whatever General Hertzog claims, in the event of Great Britain becoming involved in a war. Note that many of those claims would still remain, even if the present Imperial Conference accepted the legal experts' report and Parliament passed the needed legislation.

In foreign relations, therefore, the unity of the Empire is maintained by legal forms, not simply by the agreement on prior consultation which rests only on a constitutional convention that the 1923 Conference laid down and the 1926 Conference further elucidated. Indeed, Professor Keith regards the mere agreement on consultation as of doubtful validity, for he holds that the agreements reached in Imperial conferences have no validity in constitutional law, except in so far as they are implemented by the various parliaments of the Dominions and the United Kingdom; and he points out here that only the Union of South Africa has formally approved the 1926 Report. But stronger than the slender reed of agreed-upon consultation is the formal legal control which is always retained by His Majesty's advisers in the United Kingdom. They may be trusted not to interfere except in a most extreme case. But the constitutional and legal power is always there, at need.

In this matter he obviously sustains the same general attitude as

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that taken by Corbett and Smith in *Canada and World Politics,* and by Mr. Latham, the attorney-general in the Bruce cabinet, in *Australia in the Commonwealth.* He does not agree with the late C. D. Allin, or with President Lowell, who hold that in practice the British government was only a channel for the advice which is tendered by the Dominion governments, even in treaty matters—a position with which Mr. P. Noel Baker seems to be in general agreement in his *Present Juridical Status of the British Dominions in International Law.* He will not allow Sir Cecil Hurst to be right in saying that the Crown acts on the advice of Canadian or other Dominion ministers, a statement which Mr. MacKenzie King relied upon in the Canadian Parliament. And naturally so extreme a statement as Professor Smiddy's, that the Dominions are bound together with England only by allegiance to the *person* of the king, he treats as sheer nonsense. Certainly the legal position is simpler, on Professor Keith's reading, for it does not put upon the king the invidious necessity of having to decide which advice he must constitutionally act upon in case of conflicting views. Conflicting advice to the Crown is impossible if the British ministers can alone advise the king directly. What Professor Keith perhaps does not adequately recognize, however, is that if the Dominions were substantially independent in a personal union there would be no legal conflict involved in entirely separate action by each of them. That personal union does not yet exist. But the relationship, if it were created and recognized, might be an entirely workable means of securing the ends presently aimed at.

There is also this to be said for the forthright examination of the position along the lines that Professor Keith has chosen. It has been British tradition in this matter to hurry over or to evade the issue, with the warning that the ultimate question had better not be raised. The Crown was like a sacred mystery for which British statesmanship was kept busy devising Athanasian creeds like the Balfour Report. But if the Dominions are to be put off with a phrase like "equality of status," and allowed to proceed normally upon the assumption that they *do* have the right to advise the king *on the same terms as British ministers,* the strain that might be put upon the Imperial connection by reviving, in order to bring them to heel, obsolescent legal formulæ which had been carefully kept in the background might be very grave indeed. The same sort of tactics were employed with the American colonies after 1763. Consequently, it may be the part

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of wisdom to have the nature of "the Crown" clearly understood, if it is not merely a personal union which binds the Dominions to a common allegiance. In talking with ministers of the Crown, both in England and in the Dominions, I have myself been struck by a general vagueness in their ideas of the juristic status of the Crown in the Dominions which led to startling differences of opinion as to the present equal rights of the Dominions in constitutional as well as in international law. Dominion ministers frequently assert their right to legal neutrality, meaning only passive belligerency. But they all appear to believe that their right to advise the Crown does not depend on British sufferance.

The present system, as Professor Keith interprets it, is flexible to such a degree that the Imperial Parliament can always yield in practice to grant what a Dominion asks. Even a little vagueness may be useful, he thinks, despite his own efforts to clear up the outlines. On the other hand, Parliament in Great Britain can also, should necessity arise, assert its right to act for the Empire. It permits Dominion action in the sphere of exclusively Dominion interests. And by adopting a procedure like that of the Locarno treaties, it frees the United Kingdom from the annoyance of the *liberum veto* system of having to have *all* the Dominions sanction every British action that may conceivably in any way involve them. For this reason, too, the form of treaties, such as the projected one with Egypt, is made in the name of the king only in respect of Great Britain and Northern Ireland, since Canada objected to being included under the old form which committed the entire Empire. To Professor Keith there is small difference. Great Britain acts; the rest must follow.

No doubt there are several points on which this legalistic thesis will be challenged by his critics. But short of something approximating a juridical (if merely a symbolic) personal union, it is difficult to see how an alternative legal system can be created that will not have the aspects of a rigid confederation without the machinery to act. And if the personal union be chosen, the Crown will either be forced to act on the king's own discretion in determining which advice to accept, or it will have to permit separate, and perhaps conflicting, views to be followed in practice. In short, since personal discretion in a modern monarch for the whole Empire is unthinkable, the only alternative would be a league of states with a common but symbolic Crown. The report of the legal experts rejects Imperial supremacy,

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but attempts to avoid going so far as a personal union by making the Crown an indivisable one whose nature can be constitutionally altered only by unanimous consent—a confederation. Yet it is willing to rest this agreed unanimity upon an *entente* rather than on strict law, since the power of disallowance is to be yielded.

As Professor Keith takes international law with the same seriousness that he does constitutional,[14] he would admit the end of parliamentary sovereignty over the Dominions if the Report of the 1926 Conference had any international validity. But he urges that it has not been communicated to foreign governments as a declaration of the independent status which Hertzog demanded. And he notes that foreign governments must continue to look to Great Britain for the major responsibility for all treaties. He admits to some puzzlement in finding that the Dominions (and even India) are full international persons in the League, but not out of it. On his own reasoning, they are not fully responsible states anywhere, for all the Dominions would share with India the characteristic of being legally subject to Imperial control.

In this respect he perhaps hardly does justice to the efforts to bring League practice into conformity with the new form of signature for treaties. Mr. Henderson's declaration in signing the Optional Clause on September 19, 1925, at Geneva,[15] might be said to have been the communication to League members of a brief summary of the 1926 Report's most vital points, to say nothing of repeated references to the new status by Sir Cecil Hurst and others in League committees. The notes accompanying the letters of credence issued to Dominion ministers in foreign capitals also serve notice of the change. British plenipotentiaries now no longer carry full powers that would commit the Dominions as well. Yet one must remember how different the positions of the several Dominions are in fact before subsuming them under any legal status of general subordination or general independence. Newfoundland is not a Dominion in the same sense as is Canada.

[14] He is even prepared to see in the fact that the Dominions have ratified the Kellogg Pact without reservations a possibility, taken in conjunction with their legal status in the League (where he allows them the full international personality otherwise denied), of asserting legal neutrality should Great Britain herself ever go to war in defense of the British "Monroe Doctrine" asserted by Sir Austen Chamberlain. *Op. cit.*, pp. 469-470.

[15] Cmd. 3352 (1929). See the author's "Riddle of the British Commonwealth," *Foreign Affairs* (American), April, 1930.

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"Dominion status" for India, when or if it is ever granted, will certainly mean something far different from Dominion status for Canada. Foreign states are thus put under the embarrasing necessity of determining how far each Dominion is an international person.

Judicial Expansion of the Constitution of the British Commonwealth. Professor Keith's work will no doubt soon be out of date as a statement of legal fact, once the next Imperial Conference and the British Parliament have acted on the Experts' Report. It is possible that even now he misreads the importance of the precedents he quotes. It may be that, whatever the Balfour Report was intended to do politically, it has actually made impossible any such constitutional supremacy of the British Parliament as Professor Keith relies upon. Declarations arrived at in Imperial conferences, in view of Canada's joining the pressure from the Irish Free State and the Union of South Africa, which elicited the 1923 and the 1926 resolutions, will perhaps take on the character of controlling principles to further development. They may even influence judicial decisions, if a reorganized Judicial Committee including Dominion judges should ever be entrusted with the difficult task of expanding the Constitution. Indeed, if one sticks too closely to the law of the courts, the British constitution itself is unintelligible, and the Judicial Committee of the Privy Council has more than once tacitly accepted this fact by decisions based on "loose construction."

Professor Keith himself does not favor judicial interpretation as a method of extending Dominion powers, in the way that M. Lapointe has hoped might be the case for Canada. Here one may take the very issue of the Colonial Courts of Admiralty Act of 1890, any contravention of which (along with Imperial shipping acts) would, according to Professor Keith, justify disallowance: it is precisely here that the court has exercised what looks like a "loose-constructionist" attitude. It is odd, therefore, that Professor Keith is curiously complacent toward the dictum of Lord Merivale in the Yuri Mara Case: "what shall from time to time be added [to the jurisdiction of colonial courts] or excluded is left for independent legislative determination." And this broad construction is surpassed by Professor Keith's own remarkably inconsistent argument that this dictum justifiably puts the increase of Canada's jurisdiction, not on "special authority given by the act of 1890, but as a part of her sovereign legislative authority."

In point of fact, the Judicial Committee of the Privy Council,

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apart from its narrow and probably wrong construction in the appeal of the Wiggs and Cochrane Case,[16] has already embarked on the broad constructionist attitude. The decision that women may, under the British North America Act of 1867, be deemed eligible to the Canadian Senate, a point which even M. Lapointe (former Canadian minister of justice) thought would require the sanction of an Imperial act, has been handed down since Professor Keith wrote. It was based on the changed conditions since the passage of the act of 1867.[17] But where the Judicial Committee has taken a strict constructionist view it has endangered its own acceptance by the Dominions, as in Nadan v. the King.[18] It cannot long control parliaments which are coördinate in their powers with the parliament of the United Kingdom in all matters which are of domestic concern.

If the alternative to this view, a gradual approach to the juristic status of a personal union, with a greater reliance on joint legislation as in international conventions, is not adopted by the British Commonwealth of Nations, quite probably the technique of judicial review will play an increasing rôle. For in a way, Professor Keith's attempt at arresting the development of Dominion nationalism, even by so flexible a scheme as he has described, is a sort of federalism in which the legal limits on Dominion competence will have to be expanded by judicial review if the principle of the Colonial Laws Validity Act, or indeed any other rigid framework of limiting Dominion legislatures, is to be insisted upon. But it is difficult to see how such a court as that anticipated in Cmd. 3479 (1930), with its panels of Dominion as well as British judges, could be other than an *ad hoc* arbitral body for disputes between governments. And the Judicial Committee of the Privy Council in its present form hardly commands enough confidence in the Dominions for the larger task.

The Present Machinery of Consultation. The suggestion that the work of the Dominions Office could be profitably turned over to the

[16] A.C. 1927, p. 674. The British Government agreed with the Irish Free State that the Treasury Minute had been wrongly construed by the Judicial Committee. The Irish Free State technically accepted the decision by paying the civil servants the increased compensation in question, but the British Treasury footed the bills.

[17] A.C. 1930, Henrietta M. Edwards *et al.* v. Atty. Gen. of Canada, raised by an advisory opinion of the Canadian Supreme Court under Section 24 of the British North America Act of 1867.

[18] A.C. 1926, p. 486. This decision, declaring a Canadian statute *ultra vires* as an infringement of the prerogative right of appeal, raised a storm.

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Foreign Office, for which the former acts largely as a post-office in respect to international relations, and that the rest of the work could be devolved upon the prime minister, with secretarial assistance, accords very oddly with Professor Keith's own estimate of the existing amount of legal control over the internal sovereignty of the Dominions. If constitutional issues are not to decrease in importance, the Dominions Office still has a function. There is good ground for criticizing the operations of both the Dominion and the Colonial Office by a single minister, as the past practice has been.[19] But on the other hand, the prime minister is in no position to add to his burden. Professor Keith complains, quite properly but somewhat illogically, at the practice in the Dominions of having the prime minister, overburdened as he is, act as Secretary for External Affairs. An alternative to his own suggestions would be to create a sort of Imperial secretariat, entirely outside the machinery of the British government, but for which the Lord Privy Seal or the Lord President of the Council might act as the link with the British cabinet by taking over the machinery now vested in the Dominions Office, and perhaps devolving some of it on the Foreign Office. The two organizations would have, of course, to be entirely separate, the former probably modelled upon the League. The Dominions Office would still have to be retained, whatever it were called, for communications to the Dominions.

Possibly, too, he underrates some of the utility of the high commissioner in Canada and the new British representative for quasi-diplomatic purposes in South Africa, and overrates the diplomatic utility of the Dominion high commissioners in London. The problem is largely one of personnel and of the tradition of using diplomatic agents. But it is the complaint of the Foreign Office that the high commissioners in London do not keep actively in touch with British foreign policy. Although they are supplied with copies of despatches on current developments, they are too busy with trade and other inter-imperial matters to take more than an observer's interest. Moreover, they do not sufficiently possess the confidence of their own governments to act.[20]

[19] This arrangement has now been terminated by the appointment of Mr. Thomas to hold the single office of Secretary of State for Dominion Affairs.

[20] I do not profess to understand a mysterious deference to the function of "the British High Commissioner in the United States" as the future agency for establishing personal contact between the Dominion and Imperial governments (pp. 485-486).

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It is not quite accurate, either, to suppose that coöperation abroad always works automatically. For some years it was not true that "citizens of the Irish Free State in the United States are entitled to the full support of the British consular service, despite the fact that they have an Irish Free State minister at Washington, who, of course, has no control over British consuls, but through the British ambassador is assured of their cordial assistance" (page 447). This is slightly mistaken, since those persons who are described on their passports as "citizens of the Irish Free State" (with the addition of "and of the British Commonwealth of Nations") are not recognized as being entitled to consular aid from the British service unless they exchange their passports for those marked regularly with "British subject." This has caused difficulty for several years, and was one of the reasons for the Irish Free State Passport Control, which has effectively settled this controversy by a compromise formula agreed to early in 1930.

Although there is a formal budgetary attachment of Major Casey (the Australian liaison officer to the government of the United Kingdom for foreign relations) to the Department of External Affairs in the High Commissioner's Office (page 480), he is certainly not really a part of the high commissioner's staff. In order to fulfill his duties as a sort of "way-station" for all official confidential documents on foreign policy, he is attached to Sir Maurice Hankey's cabinet secretariat staff and housed in the Whitehall Gardens home of the Committee of Imperial Defense. His relations are of so highly confidential a nature that he can naturally communicate only directly to his prime minister through his despatches. As this officer was appointed because of his peculiar qualifications, including an intimate friendship with Mr. Bruce, it may not be so easy for Canada to work the same arrangement, as she seems to contemplate doing.

This type of liaison work naturally gets short shrift in a book on *The Sovereignty of the Dominions,* written primarily from the point of view of constitutional law. While one must admire the compact and accurate summary of the constitutional development of the British Dominions which Professor Keith has offered, the omission of the consideration of the functional side of coöperation gives a false emphasis. In order to secure real Imperial unity, it will be necessary to have more experiments of this nature, more effective consultation, and the growth of coöperation along political lines by sub-conferences and

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by meetings of the Empire Parliamentary Association, and along economic lines by coöperation of the sort foreshadowed by the research of the Imperial Economic Committee, and of the Imperial bureaus and committees which are pooling research.

For the internal organization of the Empire there also seem to be sound suggestions afforded by the League. There might quite well be a yearly Council meeting of the British League of Nations, supplemented by a meeting in London of the Dominions' delegates to the Assembly of the League, with the prospect of strengthening the personnel in a way advantageous to Dominion representation in both places. Only two or three weeks or a month for a conference in London would need to be added to the time spent at Geneva each year. And as constitutional issues become less weighty and external affairs more important, the ministries of external affairs may fall, as they have in the Irish Free State, into competent hands, even if the prime ministers who now hold these ministries in the other Dominions cannot themselves come to these yearly conferences. The growth of such services as the Imperial Shipping Committee, the Advisory Committee on Imperial Communication, the Empire Marketing Board, the Agricultural Bureaus, the Imperial Institute, and a host of other Imperial services in London will mean, perhaps, the eventual necessity of an organ of control and coördination like the present Imperial Economic Committee, representative of the Dominions as well as Great Britain, with a secretariat at its disposal like that of the League, instead of the present inadequate attention of the Dominions Office, supplemented by sporadic assistance from the Board of Trade and other departments. The British Foreign Office and Consular Service are too efficiently organized at present, and are too easily available to the Dominions, to warrant much change in their relationships. But if only the yearly Council meetings were organized to review Imperial foreign policy and inter-imperial relations, a step would have been taken in the direction of developing more effective consultation.

Unless something of this sort is done, coöperation on an Empire basis is hardly likely to develop. There is no hope, in any case, of extensive economic coöperation. Under the existing system, the Dominions have small incentive to assume even joint diplomatic responsibility. Perhaps Great Britain may prefer the existing arrangement for reasons of prestige and unity of control. If she does, the tendency

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toward a still greater lack of cohesion in the British Commonwealth may be expected to develop further as natural divergences of economic interest become more important. An indivisible Crown may prove in the end more burdensome than the alternative of independent kingdoms united by an *entente* symbolized by the common king.

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The German Reichstag Elections of 1930. Casting the largest popular vote yet recorded in any election in Germany, the German people elected on Sunday, September 14, 1930, the fifth Reichstag under the Weimar constitution.[1] Using Article 48, the Brüning government had put into effect certain emergency measures which it considered necessary to alleviate the existing economic situation. But when called upon to pass upon these decrees, the Reichstag rejected them; whereupon the President, on the advice of the cabinet, dissolved the Reichstag and ordered new elections.

The campaign occurred in a time of serious economic depression. Nearly three million unemployed persons were in receipt of government relief, either national or local. Taxes had been increased, salaries decreased, and there was widespread dissatisfaction. The government headed by Chancellor Brüning, from its inception a minority cabinet, appealed to the country to return to power with increased strength the parties which had given it support. On the other hand, the government was severely attacked by the Social Democrats for its use of Article 48; by the Nationalists because of its support of the Young Plan; by the Communists on general principles; and last, but not least, by the National Socialists led by Adolf Hitler, not on general principles, but without any principles at all! In many respects this election resembled the May election of 1924 more closely than the election of 1928.

Not only was the election of critical importance to Germany and the world from an economic point of view, but it was also of great moment in the evolution of German political parties and democratic institutions in general. A number of facts in connection with the election are worth noting before the significance of the result is indicated.

The popular vote deserves first attention. There were 35,224,464

[1] Landtag elections occurred simultaneously in Braunschweig.

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ballots cast, 267,741 of these being invalid.[2] The total number of qualified voters was 42,972,851, so that it can be seen that the voting record was eighty-two per cent. This compares with 75.6 per cent in 1928, and is exceeded only by the voting percentage for the National Constitutional Assembly in 1919, which reached 83 per cent. Under the German fixed quota of one seat for every 60,000 votes, the number of members has jumped from 491 in the fourth Reichstag to 577 in the newly elected fifth Reichstag.[3] The increased membership has occasioned no small concern in the matter of seats in the hall of the Reichstag.[4]

Another reason for the increase in the membership of the Reichstag is that fewer votes were wasted on the so-called *Splitterparteien.* In this election, 413,000 votes were cast for parties which did not secure a seat, a figure but half as large as that of 1928.[5] This diminution in the support given to small parties is due partly to the fact that fewer parties were entered in the election than in 1928. This year, 24 Reich lists were entered, as compared with 30 in 1928,[6] and 565 district lists as compared with 646 in 1928.[7] It is to be hoped that the tendency just noted may continue, so that Germany may concentrate her political activity in a relatively small number of powerful parties.

[2] In several German cities, the votes of men and women were counted separately. This was true in Cologne, Wiesbaden, Frankfurt, Bremen, and Berlin. The figures show as good a voting percentage for women as for men, with approximately the same political tendencies among the women as among the men. A slight difference was noted in the stronger support given by women to the so-called confessional parties.

[3] The new Reichstag has six more women than held seats in the previous body. There will be 39 women in the new parliament: 16 Social Democrats, 13 Communists, 4 Centrists, 2 Nationalists, and one each in four other middle parties.

[4] Only the members oldest in point of service, together with the party leaders, will now have their own desks. The remaining members will sit on benches similar to those in the House of Representatives at Washington.

[5] One of these parties called itself "Party against Alcohol," and received 1,172 votes.

[6] Eighty-nine members were elected to the Reichstag from the Reich lists of the various parties. The German politicians call the Reich list the "Hospital Schiff."

[7] A party cannot have a Reich list without having a district list, and not every party enters a list in each of the 35 electoral districts into which Germany is divided for electoral purposes. A district had on an average 16 lists, the number varying from 13 in Mecklenburg to 22 in Berlin.

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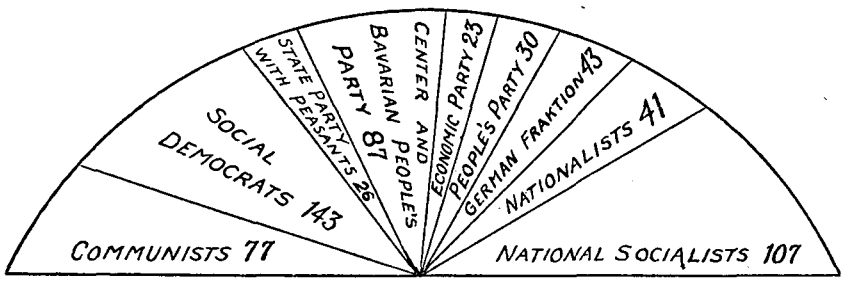
The proposed new electoral law which will be brought before the new Reichstag will, if adopted, also help in this direction.[8]

The parties received the following seats: Social Democrats, 143; National Socialists, 107; Communists, 77; Centrists, 68; Nationalists, 41; People's party, 30; Economic party, 23; State party (formerly Democrats), 20; Bavarian People's party, 19; German Land party (Schiele group), 18; Christian Social People's party (Mumm group), 14; German Peasants' party, 6; Conservative People's party (Treviranus group), 5; German Hanoverians, 3; and Land Union, 3.

This enumeration paints a somewhat exaggerated picture, for by virtue of arrangements made before and after the election, the Land party, the Christian Social People's party, the Conservative People's party, the German Hanoverians, and the Land Union have united to form "Die Deutsche Fraktion," making a total vote in the Reichstag of 43, and reducing materially the number of parties. It is also expected that the German Peasant's party, which is liberal-minded, will join with the new State party. Likewise, it is understood that the Center party and the Bavarian People's party will re-unite, thus making themselves the third largest party. The Reichstag will then appear as follows:



It is easy to see that the elections have created a truly difficult parliamentary situation. On both extremes there are no less than 184 out of the 577 members who refuse to coöperate with any government—except, of course, on terms which no government could accept. The remaining 393 members are divided seven ways, and out of these 393 a government must be constituted which can command at least 289 votes. It is impossible to think of the 41 Nationalists working with the Social Democrats, and it is difficult to conceive how the

[8] See the description of this proposed law, written by Dr. Georg Kaisenberg, in *Deutsche Juristen Zeitung*, Heft 18, S. 1153-1157.

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"Deutsche Fraktion," the Economic party, and the People's party will be able to do so. But space, as well as an abundance of caution, prevents a treatment of this difficult and involved problem here. It is sufficient for present purposes if it is understood that the elections of 1930, instead of helping the Brüning government, have made its road more difficult. Whereas before the election the parties supporting the government had just a few votes short of a majority, now they are in a hopeless minority. How they can proceed under *regular* parliamentary conditions without Social Democratic support, not to mention cabinet membership, for the Social Democrats, is difficult to foresee. With Social Democratic support, the present governing parties would have 350 votes, ample for all essential purposes. But such a broadly based coalition is fraught with many trials and tribulations. Parliamentary government with a multi-party system is verily a riddle which even the German politicians themselves are not always able to solve.

The Brüning government, which did not resign after the elections, has declared its intention of putting through its program with or without the Reichstag. If the Reichstag, which meets on October 13, should refuse to support the government's program, the cabinet will ask the President to adjourn the Reichstag. This is one way of achieving its purposes, and no one can tell what the final outcome will be.

The election was noteworthy in a party sense in that it marked the beginning of another stage in the evolution of German parties. The former German Democratic party becomes the new *Staatspartei.* Playing on the name of the leader of the party, Dr. Koch, one wit remarked that the party "had the old cook but used a new sauce." This witticism is not altogether accurate, for by joining with the *Jungdeutsche Orden,* one of the more important of the German associations, the former Democratic party gained many conservative-thinking members, and, contra-wise, lost some members, notably Anton Erkelenz, to the Social Democrats. The new party, however, is unmistakably a liberal party, and without doubt a strong constitutional party.

The seceders from the Hugenberg-controlled Nationalist party, led by Treviranus and Graf Westarp, formed a new Conservative People's party. But the election torpedoed their frail craft, which was unable to make headway against the strong party machines on right

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and left. Whether the party will die forthwith or whether it will give its name later to a new Conservative constitutional party remains to be seen. The new "Deutsche Fraktion" formed for parliamentary purposes may well be the precursor of a new party. Minister Schiele's venture in the elections with the *Reichslandbund* as a separate party could have led to a genuine Agrarian party. But it now appears that this powerful agricultural association will not maintain itself as a separate political party, but will either remain merged with the "Deutsche Fraktion" or join with the Nationalists. The same can be said for the group led by Herr Mumm, known as the Christian Social People's party, or Evangelical Movement.

The most outstanding feature of the elections was the unprecedented gains of the National Socialists led by Adolf Hitler and Dr. Goebbels.[9] No party under the Weimar constitution has had such an enormous increase in its parliamentary representation. The party jumped from 12 to 107, a 664 per cent gain! It is not difficult to explain why it gained. But it is very difficult to explain why it gained so much. No observer gave it more than half as many seats as it actually secured. But conditions were propitious to its type of demagoguery, and despite very stringent police restrictions, the party conducted a whirlwind campaign. Amply financed, apparently by certain business circles which thought that the National Socialists would be the best checkmate to the Social Democrats, the party put its propaganda across most effectively. Its campaign talk was the sheerest drivel. Never—even at home—have I heard such blithering nonsense. Its leaders talked of the "Third Reich," a confused mystical conception, where there will be no capitalists, no trade unions, no exploitation, no Jews, no negroes. With the utmost violence at times, always with hot emotion, they pelted the poor, kindly German middle classes, where they secured most of their support, with cheap and vulgar but entrancing words. And now that they have won such a great victory they are utterly bewildered as to what to do next. They demand, not the places in the government where the real work has to be done to improve conditions, but rather the ministry of the interior, which controls

[9] The complete German name of this party is *Nationalsozialistische Deutsche Arbeiterpartei (Hitler Bewegung)*. Of course it is not a workers' party, although it has tried to allure workingmen into its ranks. See an analysis of the party's representatives in the new Reichstag which appeared in *Der Abend*, September 17, 1930, Number 436.

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the police, and the war ministry. With these offices in their hands, Germany would be safe and no longer enslaved!

The only other party that made substantial gains was the Communists, who realized a relative gain (that is, relative to the increase in the size of the Reichstag) of 22 per cent. The party is now the third strongest in Germany. Obviously, a time of exceptional unemployment was good for this party, and as long as the Social Democrats continue to believe in their own self-sufficiency, the Communists are likely to extend their gains. The Social Democrats lost exactly the percentage the Communists gained, but they remain, as they have remained since the Revolution, the largest and strongest party in Germany. The Catholic Center, led by the Chancellor, fared quite well; the People's party was hardest hit.

In a word, the election gave effective expression to the real feelings of the generality of Germans, even though it may reflect on their political intelligence. As Otto Braun, the able minister president of Prussia, put it: "The majority of the radical voters voted for the extreme parties because they wanted to experiment to improve their personal situation." But this experimentation, although understandable as a protest, came dangerously near to being a genuinely reactionary movement, and it has rendered parliamentary government more difficult. It may thus tend further to discredit democratic institutions. The atmosphere created by the elections is not healthy. It is filled with pessimism, doubt, and uncertainty. The situation is even dangerous, for there is not an opposition, as in England, which, on the basis of the existing constitution, is ready to take office and carry on. Clearly the difficulties *can* be resolved, and the best opinion is that a way will be found to deal intelligently with the Herculean tasks awaiting settlement. There is certainly no immediate danger of a crisis, and there is little chance for a "Putsch." But he is a real optimist who is ready to be happy over present and near-future prospects in Germany. The situation today is certainly not as critical as in 1923 and 1924.[10] But the facts must be faced. When a Chau-

[10] Then Germany appeared to be on the brink of ruin, with her currency worthless, her industrial area occupied by foreign troops, and her international prestige gone. In the May, 1924, elections it is interesting to recall that there were elected 110 Nationalists and 33 National Socialists, together 143. This time there are 107 National Socialists and 41 Hugenberg Nationalists, a total of 148. Should the reaction—or protest, to use a milder word—be greater today than in the dark days following the inflation?

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vinist, militarist party secures 6,000,000 popular votes, one-fifth of the total, and thus makes itself the second strongest party in the state, its treaty-breaking, head-smashing policy cannot be laughed out of court. If this most recent affair of so many Germans with the "Nazis" is only a passing fancy, the world need not be concerned. But if in three months or in six months, when whatever government is patched up now will be getting into deep water, a dissolution occurs, and the "Nazis" increase their strength, such a prospect will be alarming. Only "überparteiliche Arbeit" now can avoid such a catastrophe later.

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The Canadian Elections of 1930. The decisive victory, on July 28, of the Conservative party in the seventeenth general election since Confederation came as a surprise to the Canadian people. The party, which did not elect a single member in six of the nine provinces in 1921, carried six provinces decisively and in two others, Saskatchewan and Quebec, scored its greatest successes since 1911. In 1926, Mr. Bennett, the new prime minister, was the only Conservative member between the Great Lakes and the Rocky Mountains. This time he has 23 Conservatives among the 54 Prairie members. He, indeed, has more Conservative supporters in the House of Commons than any prime minister since Sir John A. MacDonald. With a majority of 28, exclusive of the speaker, over all opposition parties, he is the first prime minister in a decade to be undoubted master of the political scene (see note 1 on following page).

When Prime Minister Mackenzie King announced, on May 6, the speedy dissolution of Parliament, he may have thought that it was wise to go to the country before the trade depression had been too prolonged, or, as seems more probable, he may have underestimated the seriousness of the situation. One of his strongest supporters, the *Manitoba Free Press,* made the following significant comment the day after the election: "The manner in which Mr. Bennett played upon Mr. King's pride, combativeness, and perhaps belief in his star in order to get him in the mood to fight a battle on ground chosen by his opponents and under conditions which helped them and put him at a disadvantage will doubtless be recorded in future books of political strategy for future prime ministers." Yet Mr. King had considerable justification for his decision. The consistent Liberal Progressive

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support since 1926 had enabled him to make his tenure of office productive of considerable useful legislation. The grievances of the Maritime provinces had been redressed, so far as was possible, with

[1] TABLE 1

(Based on Canadian press returns and possibly subject to modification in one or two instances by election appeals)

The Elections of 1930 by Provinces

	Lib.	*Cons.*	*Progr.*	*Lib. Progr.*	*United Farmer*	*Labour*	*Ind.*
Prince Edward Island .	1	3	0	0	0	0	0
Nova Scotia	4	10	0	0	0	0	0
New Brunswick	1	10	0	0	0	0	0
Quebec	40	24	0	0	0	0	1
Ontario	22	59	0	0	1	0	0
Manitoba	1	11	0	3	0	2	0
Saskatchewan	11	8	2	0	0	0	0
Alberta	3	4	0	0	9	0	0
British Columbia	5	7	0	0	0	1	1
Yukon	0	1	0	0	0	0	0
Total	88	137	2	3	10	3	2

TABLE 2

Conservative Representatives in Quebec

(Out of a total of 65 members)

1921	0
1925	4
1926	4
1930	26

TABLE 3

A Decade of Election Results

	1921	*1925*	*1926*	*1930*
Liberal	117	101	119	86
Conservative	50	117	91	139
Progressive	66	23	8	2
Liberal Progressive	0	0	11	3
United Farmer	0	0	11	10
Labour	1	2	3	3
Independent	1	2	2	2

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a resulting marked improvement in their economic situation. The Prairie provinces were gratified by the conclusion of negotiations which ended the long wrangle over the control of natural resources. The years of general prosperity had made possible a happy series of budget surpluses, with accompanying reductions in debt and taxation. The customs scandals were forgotten, and no contentious issues in the Imperial sphere had arisen since the Balfour Report. The danger of Progressive rivalry was waning rapidly, and two former Progressive leaders, Mr. Crerar and Mr. Forke, were members of the cabinet on the eve of the election.

In the May Day budget which Mr. Dunning, the minister of finance, presented there seemed to be a real election trump card. It catered to a variety of sentiments. The generous increase in the British preference was designed to appeal to British sentiment in Canada, to combat Conservative charges of "separatist" tendencies in the Liberal party, and to make possible wider markets for Canadian wheat by greater opportunities for British tea, china, textiles, and machinery in the Canadian market.[2] The important steel and iron industry was wooed with an upward revision of duties which compelled three conservative members to vote for the Dunning budget. That steadily increasing body of opinion which clamored for retaliation against American tariff duties was confronted with the steel duties and with the plan for countervailing duties, to be applied on such commodities as were affected by American tariff increases.[3] To allay the rising anger of the farmer at the "unfair" competition of New Zealand butter, the duty was immediately increased from one to four cents per pound, and a new trade agreement was to be negotiated. Thus Mr. King appealed to the country on "a record of faithful stewardship," on the Liberal vision of "the great mountain peaks of Empire trade and coöperation," and urged the importance of Canada being represented at the forthcoming Imperial Conference by a Liberal government.

The Conservative party, though at first taken aback by the budget, accepted the challenge with a confidence that events justified. Since its defeat in 1926 it had undergone a marked metamorphosis with the choice of a new party leader at a national convention in 1927 and

[2] The new tariff schedules admitted British goods free of duty under 589 of the 1,188 items. It was estimated that the increased preferences were worth $50,000,000 to British trade.

[3] Twelve such duties came into force almost immediately on fruit and vegetables.

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with the selection of a brilliant party organizer, General A. D. McRae. The new leader, Mr. Bennett, was a man of great wealth and ability. Born in the Maritimes, of United Empire Loyalist stock, but resident in the West since 1897, he had the peculiar advantage of having had no part in the election of 1917 or in the adoption of conscription—two events which, in Quebec, had been like millstones around the neck of his predecessor, Mr. Arthur Meighen.[4] Since his acceptance of office the prospects of the party had brightened with the results of provincial elections. In 1928, British Columbia returned to the Conservative fold after twelve years of Liberal rule. The year following, Saskatchewan installed a Conservative government for the first time. In Ontario, Nova Scotia, and New Brunswick the Conservative governments had survived the ordeal of elections.

As a whole-hearted protectionist, Mr. Bennett preached economic nationalism throughout his campaign with almost evangelical fervor. It alone could restore prosperity to the farmer, the workingman, and the industrialist. Even the consumer would benefit by it. For him the Dunning budget was ludicrously inadequate against American competition and a tactical blunder before the Imperial Conference. "To grant trade preferences to another state or empire without founding the preferences on a mutually helpful treaty is unsound business, profitless, and filled with ill-will and misunderstanding." In economic policies it should be a question of "Canada first." "While I deplore and regret the difficulties and embarrassments with which British industry is struggling, I am more primarily concerned with the fate of Canada's own industrial life." He denounced both the Australian and New Zealand trade agreements and sarcastically asked in Quebec if Mr. King was prime minister of Canada or New Zealand. In his "key-note" speech at Winnipeg Mr. Bennett stressed the value of a protective tariff to widen markets and so reduce unemployment. "I will use tariffs to blast a way into the markets that have been closed to you." As a further method of meeting unemployment, which he converted into the chief issue of the campaign, he promised to call a special session of Parliament after the election, and at well-chosen centers he lavishly promised public works. With an eye to the Maritimes and Quebec, where the proportion of aged is higher, the Conservative leader favored the assumption by the Dominion gov-

[4] Mr. Bennett did not run in the 1917 election and was not again returned to the House of Commons until 1925.

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ernment of the entire cost of old age pensions, and not merely of half of the cost, as was then the practice.

Since the Canadian electoral law requires two months between the issuance of writs and the date of polling, the campaign was a prolonged one—unduly so in view of the general use of radio. Both leaders "swung around the circle" from coast to coast, Mr. Bennett travelling 14,000 miles and making 107 speeches.[5] In the case of only two of the 245 seats were acclamations given, the fortunate members being Mr. Bourassa, an Independent from Quebec, and Mr. Gardiner, leader of the United Farmers of Alberta. The other seats were contested by 544 candidates, of whom 230 were Conservatives, 223 Liberals, 38 Progressives, 12 Laborites, 8 Communists, and 33 Independents.

The effects of trade depression, the losses in the stock markets, and the decline in wheat exports were revealed in the results.[6] The average Canadian elector invariably ascribes prosperity to his own efforts and adversity to the ineptitude of the government. Hard times make him listen to the cry, "It's time for a change." In this election the voter also showed a marked preference for the two-party system. Only two Independents were elected, Labor failed to increase its voting strength, and the once powerful Progressive party, split into four factions, returned only five members, being practically wiped out in Manitoba and Saskatchewan.[7] Excepting Nova Scotia and British Columbia, the Conservatives gained seats in every province. Their loss of five seats in British Columbia may be attributed to the strong appeal of the Dunning budget in a province with a large population of British birth, to the fear of loss of markets in New Zealand and Australia, and to dissatisfaction with the local Con-

[5] The election was really a duel between the Liberal and Conservative leaders, although Mr. King was helped considerably by Mr. Lapointe in Quebec, and by Mr. Dunning on the Prairies. Five provincial premiers campaigned vigorously for Mr. Bennett. It is significant that Mr. Meighen took no part in the election.

[6] Though more workers were employed than in any other year but 1929, approximately 200,000 were out of work at the time of the election. The export of wheat declined 54 per cent during the 1929-30 crop year.

[7] Labor lost one seat in Calgary and gained one in Vancouver. However, its leader, J. S. Woodsworth, received the largest majority of any candidate in the election. No Communist was successful, and almost all lost their election deposits. Of the ten women candidates, only the veteran Miss Agnes MacPhail was successful.

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servative government.[8] The spectacular Conservative gains in Quebec were due to the careful selection of local candidates, the exploitation of the butter issue in rural seats, the large number of unemployed in and around Montreal, and the waning popularity of the Taschereau government. It is also probable that the Roman Catholic Church realized the danger of encouraging the continuance of Quebec's isolation from the rest of Canada.[9] The Liberal party tried to avert the danger by an eleventh hour revival of the conscription bogy in the influential paper, *La Presse,* but was unsuccessful. On the Prairies, depression was severe in most of the cities, where there were 35,000 more voters than in 1926, and it was in them that the chief gains were scored.[10] Finally, the Conservative party did not suffer as it did in 1926 from the unfairness of the Canadian electoral system of single-member constituencies. In that year it polled 47 per cent of the popular vote, but elected only 37 per cent of the members. It was grossly under-represented in Quebec and on the Prairies and over-represented in British Columbia. In the 1930 election it polled approximately 49 per cent of the popular vote and returned 57 per cent of the members. It is the turn of the Liberals to complain of the present system.[11]

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[8] Conservative losers in British Columbia included General McRae and Mr. H. H. Stevens, one of Mr. Bennett's principal advisers.

[9] Two Liberal cabinet ministers were defeated in Quebec, Mr. Cannon and Mr. Kay. The seat formerly held by the late minister of finance, Mr. Robb, was won by the Conservatives, as was the one represented in the provincial House by Premier Taschereau.

[10] Thus, of the five Liberal cabinet ministers on the Prairies, Mr. Dunning was beaten in Regina and Mr. Crerar in Brandon, and Mr. Stewart narrowly escaped defeat in Edmonton.

[11] According to a press analysis of the official returns, 3,898,995 ballots were cast, divided among the parties as follows: Conservatives, 1,909,955; Liberals, 1,714,860; Progressives, 30,933; Liberal Progressives, 59,115; United Farmers of Alberta, 60,924; Saskatchewan Farmer Party, 22,766; Labor, 45,302; Communists, 5,685; and Independents, 49,355.

The Liberal party polled 44 per cent of the popular vote, but elected only 37 per cent of the members. As compared to 1926, the Conservatives increased their vote by 400,000 and gained 48 seats. The Liberals polled 300,000 more votes, but lost 36 seats.

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NOTES ON INTERNATIONAL AFFAIRS

The Beginnings of International Government.* *Definition and Implications of International Government.* In the preface to her *Study of International Government,* published about 1924, Dr. Jessie Wallace Hughan, an unmistakably American author, thus defines her topic: "'International' carries two simple and related meanings: pertaining to two or more nations, and concerning different nations in common. 'Government' signifies the exercise of authority in the administration of the affairs of a state, community, or society. 'International government,' therefore, is the exercise of authority in the administration of the affairs of two or more nations."

This is simple, short, and snappy, as are many American phrases coined for a people who are daily taught to think in headlines, to read in subways, and to worship what a clever author has called "the ideal of acceleration." As a sincere admirer of American business methods, and as the grateful owner of an American motor-car, I should be the last to sneer at the process of thinking in headlines and reading in subways, or at the cult of acceleration. But if there is one thing which cannot be profitably done in a hurry, it is abstract intellectual analysis. Let us therefore, with as much old-world leisure as the distinctly new-world estival atmosphere of Geneva will permit, consider these concepts a little more closely. The definitions we will arrive at will doubtless be less simple, short, and snappy than the above. Possibly, however, by positing while not pretending to solve what is assuredly a complicated problem, they may no less usefully contribute to its elucidation.

If, discarding all dictionaries and disregarding all academic discussion, we analyze the notion of government in the light of historical experience, I believe we shall agree that it contains two essential elements, without either of which there can be no true government. The first of these is authority, that is, the competence and ability to command and to be obeyed in the political sphere. The second is order, that is, a certain scheme, or method, or plan, to which the governed are made to conform.

* An address delivered before the Geneva Institute of International Relations, July 28, 1930.

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There may be authority without government, as in the case of the purely arbitrary rule of a brigand chief or a political boss. And there may be order without government, as in the elaboration of a treatise on politics. But where there is both order and authority, political authority exercised to enforce some kind of political order, then there is bound to be government. The authority may be dictatorial, as in Fascist Italy, or liberal, as in classical Athens; the order may consist in a multitude of hard and fast rules, as in the Soviet Union of the five-year plan; or it may consist in a few general principles as in "muddling through" Great Britain. Whenever and wherever is authority and order, then and there is government.

Now what about international government? By that term we may mean—and it is well not to confuse the different meanings—either government by two or more nations or the government of two or more nations.

Examples of international government in the first sense are the rather unfortunate historical instances of so-called *condominia;* also the present administration of the Saar Basin. In the latter case, a territory has been governed for the last ten years by an international commission appointed by the Council of the League of Nations, an international body. If the mandated areas were administered by the League of Nations, as was at first proposed, and not by mandatory powers on behalf of the League, as is actually the case, we should have another example of international government in the first sense. As a matter of fact, the mandate system does not offer an example of international government. This is so, not because the League of Nations is not an international body, but because the powers it exercises over mandated territories are not those of government, but only of supervision.

Examples of international government in the second sense, that is to say, the government of an international community, are, for very significant reasons, much more difficult to find. Monarchical rulers of two or more countries bound together in a personal union, such as the kings of England and Hanover before 1837 or the kings of Sweden and Norway before 1905, might have been said to exercise international government. As a matter of fact, they did not. Likewise, during peace negotiations, the power or powers victorious over a coalition of allies, enforcing its or their will simultaneously on two or more defeated enemies, might be spoken of as temporary inter-

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national rulers. I do not know whether the term has ever been used in that connection.

The Peace Conference of Paris in 1919, to be sure, is sometimes given as an example of international government. That is so, however, rather because the victorious governors formed an international group than because they laid down the law for the international community of the defeated. Nor is the government of a confederacy or of a federal state, such as the British Empire or the United States of America or the Swiss republic, ever spoken of as an international government.

If we pass in review all historical examples of government in which several political units were subjected to a common rule, we shall never, I believe, discover a single example of what any of us would be tempted to call international government. And still it was with a view to speaking of the states assembled in the League of Nations that I was asked to discuss the beginnings of international government. What is the explanation of the riddle? It is very simple—or, rather, there is no riddle at all, but only the loose expression of a vague idea.

Some of us are apt to think of the League as an example of international government, less because the members may seem to form a community of governed than because they may seem to form a community of governors. They are thought of as governing, not as being governed—of governing one another, it is true, but not as being governed one by another.

If one were to suggest in public that a state member of the League of Nations was being governed by any one but its own exclusive self, he would be evicted from office if an official, defeated at elections if a candidate, and possibly censured even if only a mere professor. In my opinion, such treatment, although excessive, would, in the case of the professor at least, not be unreasonable. As we shall see presently, it is not true to say today, although I sincerely hope that it may become less untrue at a not too far distant date, that a state member of the League of Nations is governed by the international body of which it is a part.

It, of course, follows that if members of the League are not really governed from Geneva, they together, as a League of Nations, govern no one, except as we have seen, the Saar Basin, and that only as a temporary expedient. If, therefore, the League is not engaged in

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international government in the second sense of the term, it cannot truly be said to be engaged in it in the first. If no state and no group of states consents to be the object of international government, the community of states forming the League can clearly not be an agency of international government.

Indeed, if we wished to sacrifice current linguistic usage to logically precise phraseology, we could show that there is a contradiction involved in the term "international government." Government, as we have seen, is authority to enforce order. A nation or a state is, according to orthodox theory, a sovereign unit. Even if we discard the classical doctrine of absolute sovereignty as an ideal, we must admit that in ordinary parlance a nation or a state ceases to be a nation or a state when it submits to a superior authority. New York is not a state in the international sense, in spite of its size, wealth, and population, which in Europe would almost entitle it to rank as a great power. Nor do New Yorkers constitute a nation. Why not? Simply because, submitting as they do, in theory at least, to the will of the federal government, they are not politically independent.

Now if a nation forfeits its status as a nation by bowing to the authority of a superior government, then clearly international government is a misnomer. Either there is government—and then it is not international, but supernational, or rather world government—or there are independent nations—and then there is no international government, although of course there may be international coöperation or organization.

The term international government is therefore ambiguous or over-ambitious. It is ambiguous if used to describe a hypothetical world government, as ambiguous as the term interstate government would be to describe the constitutional system of the United States or the term intercantonal government to describe that of Switzerland. And it is over-ambitious if used to describe what goes on in Geneva, for, as we shall see, that is hardly government at all.

Now this is not a mere quibble, as it may seem to some at first glance. All those who expect the League of Nations effectively to prevent war, to promote disarmament, and to reorganize the world in accordance with the best economic interests of the inhabitants of the globe more or less consciously think of it as a super-state or a world government. When they do so consciously and intelligently, they may be bold enough to admit it, as did Mr. Oscar Crosby in his

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book entitled *International War: its Causes and its Cure* (1919), or, more recently, Mr. H. G. Wells in several of his writings. But when they do so unconsciously, as vast numbers of people all over the world do today, they are apt to allude to the League as an institution of international government—in that case a convenient term for the muddle-headed and a phrase adequate only for the expression of a confused idea.

My insistence on this point is not due to any academic verbal frenzy, such as we professors sometimes seem to indulge in with the delight of perversity. My wish is only to call attention to the dangers of a term which, unless clearly understood, necessarily promotes loose thinking on what is to my mind one of the fundamental questions in international relations.

In order to soothe those whom this pedantic discussion may have irritated and to show that my views, even if deemed startlingly heterodox, are not confined to academic circles, let me quote from the illustrious author of the *Outline of History*. In this statement, drawn from an article entitled *Delusions about World Peace*,[1] the main point I have sought to make is particularly stressed. It is indeed stressed with an emphasis that would seem impertinent and that would be exaggerated on the part of anyone not an intellectual genius, legitimately enjoying the novelist's privilege of over-statement. "One real test of pacifist sincerity," says Mr. Wells, "is to be found in the pose toward national independence. To anyone who will sit down for five minutes and face the facts squarely it must be evident that the organization of world peace, so that war will be impossible and disarmament secure, involves some sort of federal authority in the world's affairs. At some point there must be the certainty of a decision upon all disputes of races and peoples and nations that would otherwise necessitate war. And this authority must clearly have the power to enforce its decisions. Whatever navies and armies survive, other than police forces for local and definite ends, must be under the control of this central authority. It may be a committee of national representatives or what you will, but central authority there must be. Pax Mundi, like the Pax Romana or the Pax Britannica, must be the only sovereign power within its realm. If you are not prepared to see your own country and your own flag so far sub-

[1] H. G. Wells, *The Way the World is Going* (London, 1928), pp. 149-150.

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ordinated to collective control, whatever protestations of peaceful intentions you make are either made unintelligently or else in bad faith. Your country cannot be both independent and restricted. Either you are for Cosmopolis or you are for war."

Does International Government thus Defined and Understood Exist Today? We have seen that, speaking strictly, international government is a misnomer. Taking it, however, in the sense of supernational or world government, let us see whether any beginnings of it may be said to be apparent on the international horizon today. Let us examine first whether there is any order in the relations between states, and then whether there is any authority competent to enforce that order.

It has become the fashion amongst students of international affairs to speak of our contemporary world as offering the spectacle of international anarchy. This significant phrase should not blind us to the fact that there is today much more order in international relations than there ever has been in the past, that not only has peace come to be regarded as the normal condition of international relations, but by far the largest number of political, economic, and intellectual dealings between different states and their nationals take place without injustice or friction. In case of difficulty, national laws or international treaties recognized as valid by both parties and administered by unchallenged national or international tribunals provide a peaceful and orderly means of settlement.

Unfortunately, there remain several possibilities of disagreement, and among them some of the gravest sources of conflict. I shall not attempt to enumerate all the classes of cases in private international law where no one guiding principle of solution is adopted by all states, and which are therefore not susceptible of a settlement legally satisfactory to all parties. Such cases, numerous and troublesome though they be as occasions of disputes between individuals and as symptoms of international disorder, are not the most serious. They are seldom more than pretexts for interstate conflicts. Moreover, their number tends to diminish with the not too difficult progress of private international law. The real subsisting international anarchy lies elsewhere. It is to be found in the fundamentally unsatisfactory and unsettled relations between the states themselves, much more than in those between the respective citizens.

Briefly to circumscribe this anarchy, we may say that it springs

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from three distinct sources. One is the still persistent reluctance of most states to agree once and for all to accept the jurisdiction of an independent tribunal and to abide by its decision whenever there is a generally recognized law or legal principle applicable to the case in dispute. The recent very noticeable progress of so-called compulsory arbitration tends to narrow this hotbed of disorder. But it will subsist until all states have, without any reservation and without any time limit, accepted the compulsory jurisdiction of some international court of justice. Up to date (July 28, 1930), 28 signatories, out of some 70 so-called sovereign states, have finally accepted the jurisdiction of the Permanent Court of International Justice, under Paragraph 2 of Article 36 of its Statutes. But among them there are as yet only two great powers, Germany and Great Britain; and in no case has this step been taken without some often important reservations or conditions.

We are here, however, in the presence of a rapidly spreading system of legal international order. It is to be hoped and, I think one may add without undue optimism, expected, that our generation or the next may see the completion of this very happy evolution. It is coming to be more and more generally recognized that, as M. Briand had the courage to say on the platform of the Ninth Assembly, "there is no dishonor even for a Great Power to go to The Hague and to return disappointed." As Professor Laski has rightly said,[2] "To suggest that a nation is humiliated by being proved in error is as wise as to suggest that trial by battle is likely to result in justice. A power, indeed, which urges its prestige as a means of evading international jurisdiction is fairly certain to be wrong."

The progress of compulsory arbitration, important as it is, is, however, far from tending to the establishment of a complete international order. The second element of anarchy in the present situation is the absence of any pacific means of modifying international law without the consent of all states concerned. Existing international order may be fundamentally unfair on certain important points, and it is bound, unless altered, to become more and more so in course of time. Certain frontiers may be indefensible on grounds of justice. The very unequal distribution of colonial possessions and natural resources may be rightly resented, not only by those who have been despoiled, but

[2] *Op. cit.*, p. 167.

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even by the large majority of mankind. Certain limitations of independence may seem unjustified, not only to people struggling for emancipation, but even to the disinterested onlooker.

No matter how revolting to the general sense of justice, and no matter how threatening to peace, international law, even if administered by a court of justice whose jurisdiction would be universally recognized, affords no redress in such cases. Diplomatic negotiations, mediation by the Council of the League, consultation by *ad hoc* commissions, international conferences, and discussions before the Assembly under Article 19 of the Covenant may achieve something, but only if the beneficiary of an unfair advantage consents to relinquish it. If he does not, the international community is helpless. It is in the position of a state whose constitution refused to allow for legislation by majority and contained no provisions permitting its own amendment. As Professor Brierly said in the course of a remarkable lecture on "The Function of Law in International Relations" two years ago, "The problem of the peaceful incorporation of changes into an existing order is the supreme problem of statesmanship, national or international. Whenever it is not frankly faced and solved, revolution in the national, and war in the international, field will always in the long run burst the fragile dams of legal formulas by which we vainly try to stabilize a changing world. The paradox of all law is that it cannot keep its vitality unless there exist legal means of overriding legal rights in a proper case, but if we believe that the law exists for men and not men for the law, it is right that this should be so. Within a well-ordered state the pressure for change is more or less successfully canalized by a legislature, which can weigh demands and judge what changes are just, and when. In the international sphere the problem has not yet found its solution."[3]

The third source of international anarchy lies in the fact that many phenomena of international importance are at present still beyond the orbit of international law. Whereas in the preceding case an international tribunal, if consulted, is bound to render a decision contrary to the dictates of justice, because the law itself is unjust, here it cannot even be consulted, or is bound, if consulted, to remain mute, because there is no law for it to apply.

A state may strangle its neighbors by means of its tariff policy. It

[3] In *Problems of Peace* (3rd ser., London, 1929), p. 297.

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may oppress its own nationals or exclude all foreigners from the enjoyment of its natural resources. It may make the most elaborate and threatening preparations for a war of aggression, and thereby oblige its neighbors either to enter into a ruinous race of competitive armaments or to submit to any one of those forms of pressure and bullying to which disproportionate force has so often given rise in the past. The world of sovereign states as at present organized is equally helpless in the presence of such policies, which, while not illegal, are as disruptive of international order as they are threatening to peace. To quote Professor Laski once more: ". . . the notion of an independent sovereign state is, on the international side, fatal to the well-being of humanity. The way in which a state should live its life in relation to other states is clearly not a matter in which that state is entitled to be sole judge. That way lies the long avenue of disastrous warfare of which the rape of Belgium is the supreme moral result in modern times. The common life of states is a matter for common agreement between states. International government is, therefore, axiomatic in any plan for international well-being. But international government implies the organized subordination of states to an authority in which each may have a voice, but in which, also, that voice is never the self-determined source of decision. . . . England ought not to settle what armaments she needs, the tariffs she will erect, the immigrants she will permit to enter. These matters affect the common life of peoples; and they imply a unified world organized to administer them."[4]

So much for international order, which, as we have seen, is the rule, and international disorder, which, while exceptional, is still, and I may add increasingly, dangerous in a constantly shrinking world. Now how about authority—that authority without which even complete and perfect order is not government? Without the authority to impose and to enforce order, there is not only no government, but there can likewise be no security. This is, in fact, the only justification for government on the international, as on the national, plan. If nations or individuals could be relied upon willingly to accept and faithfully to observe, as self-imposed law, all the suggestions of a duly qualified advisory agency, then government, national or international, would be superfluous, as it is necessarily always more or less

[4] *Op. cit.*, p. 65.

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oppressive. No government! Such is, therefore, the plea of the thoroughgoing anarchist. He is an anarchist, not because he favors disorder, but because he believes in the possibility of spontaneous order. In the national field, however, the anarchist is looked upon as a dangerous utopian, and by no one with as much suspicion and intolerance as by those conservatively-minded members of the community for whom the dangerous utopian on the international plan is he who most insistently clamors for some form of supernational government.

Now, supernational government and absolute national sovereignty are, as we have seen, logically and historically incompatible. The authors of the Covenant of the League of Nations, wisely recognizing that any frontal attack on the sacrosanct citadel of national sovereignty was doomed to failure and would only, if attempted, spell disastrous defeat for their whole undertaking, deliberately refrained from it. Who could blame them when, timid and cautious as they made the document, it still proved too revolutionary for the people of the United States and too threatening for senators' sense of national independence? Who could blame them when the first Assemblies, interpreting Articles 10 and 16, went still further in the desire to limit the authority of the League and to reduce the obligations of its members? Who could blame them when, later on, the Draft Treaty of Mutual Guaranty in 1923 and the Protocol of Geneva in 1924, which were conscious reactions against this tendency, proved unacceptable to all non-European states? And who could blame them today in Europe when, more than ten years later, even M. Briand, perhaps the boldest internationalist on the front of the political scene, has felt bound in his famous Memorandum to insist on his fervent respect for the absolute sovereignty of the states between whom he proposes to establish a federal bond?

The League, therefore, having no authority over its members, because its members will accept no binding obligations toward it, is not an institution of government. It is, if you please, a government by persuasion. But that is a literary phrase without any scientific meaning. Government by persuasion is persuasion and not government.

But, it may be asked, are there not at least some beginnings of government in the League? Are there no moral forces at work in Geneva which, even without governmental authority, tend to guide the wills of the sovereign states toward some common goal? Taken in this sense, I think we may reply in the affirmative. Although much has

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been said about the famous "spirit of Geneva" which may sound well in a political speech or in a post-prandial address, but which would be out of place in a scientific lecture, there is no doubt in my mind that there is here an environmental influence which does contribute to promote international coöperation. It is not, as some of my fellow-citizens like to believe, the influence of the historic city-republic of Geneva. It is rather the result and the expression of an international *esprit de corps* which may well prove to be the embryo of a future world patriotism.

When leading statesmen of fourteen countries meet three or four times a year as members of the Council in Geneva, or when leading statesmen of some fifty nations spend a month together as members of the Assembly, discussing and trying to solve problems of common concern in a spirit of conciliation and friendliness, they become something more than mere plenipotentiaries of their respective sovereign states. A new loyalty toward the League, or even toward mankind as a whole, is sometimes discernible, which makes for mutual concessions and thereby for something in the nature of a common policy. The best proof of the reality of this intangible and imponderable spirit is to be found in the fact that, when these statesmen return to face their respective national parliaments, they are invariably accused by their respective nationalists of having succumbed to the diplomacy of their sly and wicked foreign antagonists.

Neither the Assembly nor the Council governs the world, or the League of Nations, or any of its members. But they do undoubtedly exercise a certain influence on the shaping of national policies. In this sense, beginnings of international government may be detected in Geneva. What there is, really and obviously, on the other hand, is international coöperation and international organization.

In the evolution which seems to carry the nations of the world from absolute isolation to real federation, three successive phases may be distinguished. The first is that of free and spontaneous coöperation. This stage started with the beginnings of intercourse and diplomacy and progressed very rapidly with the advance of population, wealth, industrial science, and trade. Already before the World War it had reached such development and intensity that in various technical fields it had given rise to international unions, just as in the political field it has since the most ancient times led to defensive and offensive alliances of different types.

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The second phase in this evolution may be described as that of voluntary and self-imposed organization, of which such unions and alliances were the prototypes, and of which the League of Nations is the most recent expression and the most perfect instrument. In this phase, the source of all power and of all decision still remains with the individual nations. But they agree, under certain conditions, for a certain time, in certain contingencies and for certain well-defined purposes, to conform their respective policies to certain generally accepted principles. They even go so far, in a few exceptional circumstances, as under Article 15, Paragraph 7, of the Covenant, or under the Optional Clause of Article 36 of the Statute of the Court, or under the General Act of 1929, or under various bilateral treaties, as to bind themselves to submit to the verdict of a foreign authority. In so far, but in so far only, international organization may be said clearly to foreshadow the third phase of this evolution, the final phase of world government.

In this progressive development, the states members of the League are unequally prepared to participate, or rather are not all prepared to go equally far. France and her Continental allies, who have everything to gain and nothing to risk by the establishment of an order of things in which present frontiers will be guaranteed by the combined forces of the League, seem in some respects ready to go farthest in the direction of world government. But when it is suggested that there, of course, can be no such government without the power to revise existing treaties, if the interests of the greater part of the community should demand such revision, even France and especially her eastern allies become most insistent on the sacred character of their sovereign rights.

The discontented states of the world, i.e., those against whom the peace treaties were drawn up—the defeated Central Powers, Italy, a disappointed victor, and China, the victim of her allies' triumphs, assume the opposite attitude. They are for League government in so far as League government means the possibility of redrafting the map of the world, but vigorously opposed to it when it implies the collective stabilization of the present conditions.

The European ex-neutrals, who are all small states, wish to strengthen the League in its judicial functions, but are very reluctant to endow it with more political power. They are content with international organization which, in their view, implies the general appli-

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cation of the principle of compulsory arbitration. But League government, which, they fear, would mean government by the Great Powers, has no attractions, and is indeed not without its terrors. The weakness of their position resides in the fact that, while they impatiently demand disarmament, they are unwilling to make the sacrifices of national independence which international guarantees—without which there can be no general disarmament—inevitably demand. The attitude of Great Britain in its present temper is not very different, although it is, of course, based on other political and geographical considerations.

The non-European states are, on the whole, still in the phase of international coöperation. They are sometimes ready to consider a measure of international organization, but they are always resolutely averse to any form of world government. Whether they belong to the League, as Japan, the British dominions, and the smaller Latin American republics, or whether they participate only in its technical activities, as do the United States, Brazil, Mexico, and Argentina, their policy is fundamentally the same. They are for coöperation, because coöperation means enhanced prosperity. They are suspicious of organization, because organization may imply troublesome obligations. And, with the possible exception of Japan, they are violently opposed to world government, because world government would seem to threaten their privileged economic position, endanger their newly won independence, and too closely associate them with all that is objectionable in the intolerable continent of Europe. For states so disposed, the platonic vows of the Kellogg Pact and the pious aspirations of disarmament discussions are the last word in the art of preventing war.

As for Soviet Russia, it, of course, occupies a place by itself. In the eyes of Moscow, coöperation with capitalistic nations would be a futile farce were it not an adventure offering some opportunities for revolutionary propaganda and some possibilities of obtaining foreign credits. International organization is meaningless and world government the sole desirable goal, world government implying, of course, the incorporation of the rest of the universe in the Union of Federated Socialist Soviet Republics.

Such, in very rough outline, is the map of the globe, as I see it, when considered from the point of view of international relations. Even the most enthusiastic friend of world government must admit

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that from such beginnings to that goal, "it's a long, long way to Tipperary!"

Why World Government is Desirable and Why it is Still Almost Universally Opposed. Let us, in conclusion, ask ourselves why mankind should appear to be blindly groping for some form of world government and why it should still be so reluctant to advance deliberately in that direction.

In our sceptical age, almost all moral axioms may be, and are in fact, questioned. Were one to ask, however, whether peace is preferable to war, harmonious coöperation to hostile rivalry, and prosperity to poverty—in a word, life to death—even our agnostic humanity would almost unanimously answer in the affirmative.

Now, without some form of supernational authority entrusted with the duty of maintaining peace, securing disarmament, and promoting prosperity—that is to say, the duty of governing mankind in the exclusive interests of mankind—the coveted goal would appear even theoretically inaccessible. "Either you are for Cosmopolis or you are for war," as H. G. Wells declared in the above quoted lapidary formula. The story of all recent and successful federations would seem to confirm this view. "Either you are for a United States of America, for a unified Germany, for a Swiss confederacy, for a kingdom of Italy, or you are for war, stagnation, and poverty." Thus spoke the American federalists of 1787, the promoters of the German Zollverein in the first half of the nineteenth century, the Swiss progressives in 1848, and the Italian patriots of the *Risorgimento*.

But why does not all civilized, pacific, and forward-looking humanity speak like Wells today? The reasons are obvious. In the first place, there is as yet in the twentieth century no world patriotism comparable in vital intensity to the American, German, Swiss, or Italian patriotism of the eighteenth and nineteenth. The millenaries of common aspirations, strife, and suffering which mankind has lived through since the beginnings of time have not yet given rise to a true and strong feeling of world solidarity. The disruptive forces of different origin, race, tradition, language, culture, and religion are still far more potent than the uniting forces of common experience and common interest.

In the second place, the love of freedom and independence, perhaps the most powerful impulse of individuals and nations, still blocks the road to federation. Freedom and independence, the necessary con-

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ditions of self-assertion, are not only highly prized advantages but have come to be sublimated into sacred ideals. Generations in all countries have striven, bled, and died for the cause of freedom and independence. Is it surprising that men today should resent the very thought of a superstate conceived as depriving them of these blessings?

To be sure, any well considered plan of world government should tend to enlarge and not to limit individual freedom, and indeed also national independence in the best sense of the term. By doing away with war, crushing armaments, suicidal rivalry, and all the hindrances and restrictions of national sovereignty, it should appear as an instrument of human emancipation and not of oppression. It would, of course, be, not a foreign government, but a coöperative institution, destined to protect individual and collective rights of self-determination and not to impose any uniform system of local and national administration. Differences of culture, language, and religion would be treasured as necessary conditions of life and progress.

All this may be true, and indeed obvious; but it is not yet understood by the man in the street, be it Main Street, Wall Street, the Strand, Under den Linden, la Rue de la Paix, or even Quai Wilson. In this connection, I venture to suggest that the term Cosmopolis is exceptionally unfortunate as the name of a world state, since it would seem to evoke an imposed uniformity of type much more than a peacefully organized and harmoniously federated diversity of local and national units.

The third main obstacle on the road to a world government results from the very unequal stages of national development we have noted above. If set up tomorrow, a world state would almost necessarily imply a very unequal, and therefore unfair, distribution of benefits and sacrifices. Some countries, and above all the United States of America, are large, thinly settled in comparison to their natural resources, and relatively secure from foreign aggression. Others, on the contrary, especially in Europe, are small, over-populated, and hedged in on all sides by threatening neighbors.

While the two previously mentioned obstacles, and especially the second, should be overcome with comparative ease by education and enlightenment, the third strikes me as insuperable for the present and the near future. Time alone, the progressive equalization of economic and social conditions which it seems bound to bring about, cumulative experience of the dangers for all, and even for the most

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protected, of sovereign states, and the constantly growing realization of the real solidarity of the most fortunate and the least fortunate of the human family may gradually lead us all on with a more assured gait toward some form of that supernational government of which we are today witnessing the timid and halting beginnings.

Let me close with a last quotation from Professor Laski which may serve, with some qualification, as both a summary and a conclusion: "The implication, in a word, of modern conditions is world government. The process, naturally enough, is immensely more complicated than the government of a single state. The spiritual tradition of coöperation has still to be created; the difficulty of language has to be overcome; the application of decisions has to be agreed upon in terms of a technique that is still largely unexplored. The only source of comfort we possess is the increasing recognition that modern warfare is literally a form of suicide, and that, as a consequence, the choice before us is between coöperation and disaster. That was the sense which, in 1919, led the makers of the Peace of Versailles to strive for the mitigation of its inequities by the acceptance of the League of Nations. The latter, indeed, is the façade of a structure which has not yet been called into being. But it has at least this great importance, that it constitutes an organ of reference which goes beyond the fiat of a given state. It is, in fact, either nothing, or else a denial of national sovereignty in world-affairs. It is upon the basis of that denial that we have to build."[5]

With the end of this statement, spirited and speculative as everything that flows from its brilliant author's pen, I find myself unable fully to agree. The League of Nations is a "denial of national sovereignty" neither in the intention of its founders nor in actual practice. Still less is it "nothing." It is, as I see it, an attempt to build up international coöperation on the foundations of national sovereignty. As such, it is not, and cannot be, an inviolable temple of peace. But it is more than a happy façade. It is, in my view, an invaluable structure, both in its present admittedly limited potency and especially—if I may be allowed a final architectural simile—as a most necessary bridge leading from the international anarchy of the past over into the well-ordered world government of the future.

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University of Geneva.

[5] *Op. cit.*, p. 227.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

A full announcement of the next annual meeting of the American Political Science Association appeared in the August issue of this *Review* (p. 736). It need not be repeated here, save to say that the place is Cleveland, the headquarters the Statler Hotel, the date December 27-29. Programs will be mailed to members of the Association in the immediate future.

Professor William B. Munro, who has been a member of the teaching staff at Harvard for more than a quarter of a century, retired from the service of that university in September and has become a year-round resident of Pasadena, California, where he has been spending a part of each winter since 1920. Dr. Munro will devote most of his time to writing, but retains an academic connection as a member of the executive council at the California Institute of Technology.

Dr. Raymond L. Buell, research director on the staff of the Foreign Policy Association, spent the past summer visiting the six republics of Central America. Without discontinuing his work for the Foreign Policy Association, he is serving this autumn as visiting professor of international relations at Yale University.

Professor Edwin A. Cottrell, of Stanford University, has been appointed a member of the California commission on county home rule, which is to report to the January session of the legislature plans for reorganization of the counties of the state.

Professor August Vollmer resumed his duties at the University of Chicago during the autumn quarter. Under his direction, a regional survey of police administration is being carried on in the Chicago area. A representative committee, of which Professor L. L. Thurstone is chairman, is undertaking experiments to test the validity of the so-called "lie detector."

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Professor Graham H. Stuart, of Stanford University, has returned from a year of research on the international administration of Tangier. His book on the subject will be published by the Stanford University Press this fall. He gave lectures on "La Politique Etrangère des États Unis et l'Amérique Latine" at universities in Montpellier, Toulouse, Poitiers, and Paris, as a representative of the Carnegie Endowment for International Peace.

Dr. Rudolf Holsti, minister of Finland to Switzerland and a member of the Council of the League of Nations, gave courses on international relations and the League of Nations at Stanford University during the past summer. He took part in the Sixth Institute of International Relations at Berkeley, and addressed numerous organizations on the work of the Council of the League.

Dr. Frank H. Wood, for over twenty years professor of political science and international law at Hamilton College, died on August 22. His influence was great among his students, and he did much to further the teaching of international law at smaller institutions. He had retired from active work at the time of the June commencement. Professor Walter H. C. Laves has taken over his courses, and Mr. George Ridgeway has been appointed associate professor of political science for the current year.

Professor Charles W. Pipkin, professor of comparative government at Louisiana State University, has returned to his work after a year abroad. He taught at Arkansas and Virginia during the summer, and will soon publish a two-volume work entitled *Social Politics and Modern Democracies.*

Mr. Taylor Cole, assistant professor of government at Louisiana State University, is on leave of absence at Harvard University for the year 1930-31, and Mr. R. L. Carleton, instructor, is on leave for the year at the University of Illinois.

Dr. Austin F. Macdonald, formerly of the University of Pennsylvania, now holds a professorship of political science at the University of California.

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Dr. Charles W. Shull, formerly of the University of Kentucky, has joined the department of political science at the College of the City of Detroit, and will be in charge of courses in American government and political theory.

Dr. Herbert F. Wright, since 1923 professor of political science at Georgetown University, has been appointed professor of international law at the Catholic University of America, from which institution he received his doctor's degree in 1916.

Professor A. B. Butts, vice-president and head of the department of government at the Mississippi Agricultural and Mechanical College, received the degree of bachelor of laws at the Yale Law School at the close of the 1929-30 session.

At the request of Mr. C. A. Dykstra, city manager of Cincinnati, Mr. Bruce Smith, of the National Institute of Public Administration, has undertaken, in coöperation with the Cincinnati Bureau of Municipal Research, a study of the relation of the police department with the other agencies of the city.

The committee on award of the annual Baldwin Prize has awarded first, second, and third prizes to Joel Gordon, Lowell Whittemore, and Harry H. Kleinman, respectively, all of Harvard University.

Mr. Stuart A. MacCorkle, who is completing his work for the doctorate at Johns Hopkins University, has been appointed to an instructorship in government at the University of Texas.

After a year of graduate study at Harvard University, Mr. J. Alton Burdine has returned to the University of Texas as an instructor in government.

Dr. Jesse T. Carpenter has been promoted from instructor to assistant professor of political science at New York University.

Dr. Raymond S. Short, who recently completed his graduate work at the University of Pittsburgh, has accepted an instructorship in political science at Temple University. His special interest will be the development of the course in municipal government.

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Dr. Harold H. Sprout is continuing for the year as acting assistant professor of political science at Stanford University, and is giving courses in international relations and political geography.

Professor Arthur W. Macmahon, of Columbia University, is to be visiting professor of political science at Stanford University in the summer of 1931.

Dr. William M. Strachan has been promoted from associate professor to professor of political science, and Mr. Yale K. Kessler from instructor to assistant professor, at Ohio Wesleyan University.

Dr. Joseph B. Shannon, who gave courses during the summer at the University of Kentucky, has been made associate professor of history and political science at Transylvania College.

Mr. Earl E. Warner, graduate assistant in political science at Ohio State University during the year 1929-30, has been appointed graduate assistant at the University of Michigan for the year 1930-31.

Dr. N. D. Houghton has been promoted to a professorship of political science at the University of Arizona. He taught in the summer session at the University of Illinois.

Dr. Wallace Murphy, of the University of West Virginia, has been selected by the University of Texas to make a survey of county government in Texas.

Dr. Carl Heinrich Becker, honorary professor in the University of Berlin, lectured at the University of Chicago in October on European civic education.

The National Institute of Public Administration has completed a survey of the government of Williamsburg, Virginia.

The fifteenth conference and good-will congress of the World Alliance for International Friendship was held in Washington on November 10-12.

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Dr. Harvey Walker, of the department of political science at Ohio State University, has been elected secretary-treasurer of the newly reorganized Ohio Municipal League. A monthly news bulletin has been established, and the first annual meeting will be held at Cleveland on November 12 in connection with the National Conference on Improving City Government. Dr. Walker has been granted a leave of absence from teaching duties for the fall and winter quarters of 1930-31, and during this time will serve as assistant director of finance of the state of Ohio, in charge of the formulation of the state budget estimates for the next biennium.

Professor C. P. Patterson, of the University of Texas, announces that Pi Sigma Alpha, national honorary fraternity in political science, will hold a convention in Cleveland in December at the time of the meeting of the American Political Science Association.

The seventeenth annual convention of the International City Managers' Association was held at San Francisco September 24-27, 1930. Various sessions were devoted to municipal finance, personnel administration, police administration, municipal reporting, and "getting and using facts as aids to management."

The fiftieth anniversary of the founding of the School of Political Science at Columbia University was celebrated on October 14 and 15, the occasion furnishing a unique opportunity for honoring the school's founder, Professor John W. Burgess, still vigorous at eighty-six though he retired from active teaching eighteen years ago. In connection with the commemoration, a bibliography of publications of the Faculty of Political Science (the status of a separate school was abandoned in 1909) is being published. More than 3,700 books and scholarly articles will be listed.

At the London Conference of Institutions for the Scientific Study of International Relations held in March, 1929, the Council on Foreign Relations was designated as the national center for such organizations in the United States. In order to assemble accurate and up-to-date information on the work being done in this field in this country, a questionnaire has been sent to each of the organizations now listed at Council headquarters. It is earnestly requested that any organiza-

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tion which has not received such a request send its name and address to the Council at 45 East 65th Street, New York City, and a questionnaire will be forwarded promptly.

The annual summer conference of the British Institute of Public Administration was held in New College, Oxford, July 11 to 14. In attendance were officials from half a dozen government departments, town clerks and other officials, visitors from Canada, Ceylon, and South Australia, and four from the United States—Mr. Louis Brownlow, former president of the City Managers' Association, Clinton Rogers Woodruff of Philadelphia, Professor John A. Fairlie of the University of Illinois, and Mr. Roland Egger of Princeton University. The subjects discussed included personality in public administration, relations between the official and his council, how to fill higher posts, relation of government to organized industries, and rationalizing the processes of administration. As usual, the principal papers were printed in advance, and the sessions were devoted to discussion. Mr. I. G. Gibbon, of the Ministry of Health, presided.

New Hampshire Constitutional Convention of 1930. In pursuance of a popular vote at the election of 1928, New Hampshire held one of her not infrequent constitutional conventions (there have been four since 1902) in June, 1930. It convened on June 4 and adjourned on June 13, having been actually in session six days. The president was Frank N. Parsons, a retired chief justice of the supreme court. The number of delegates was 459; the largest number who voted was 416 (in the election of a secretary on the opening day); the largest number recorded as voting on any measure was 347.

Twenty-three proposals for amendment were introduced. Five of these were adopted by the convention, and appeared on the ballots in November, as follows: (1) provision for item veto on appropriation bills; (2) empowering of the legislature to enact a law providing for absent voting in state elections, the supreme court having given an advisory opinion against such a law under the existing constitution; (3) also as a result of an advisory opinion, an amendment empowering the legislature to fix the exemptions in any income tax law that may be enacted, and also limiting the rate of such taxation to the average general property tax rate; (4) "an estate tax may be imposed equal to such credit as may be allowed by federal estate legis-

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lation on account of similar taxes to the several states;" and (5) reduction of the House of Representatives from about 425 to about 350 members.

The last-mentioned proposal is the only one of the five that seems to require comment. Under the present arrangement, any town or city ward which has a population of 600 has one representative (smaller places having a curious "part time" representation); and the number of additional population which entitles the town or ward to an additional representative is 1,200. Thus a town with a population of 5,000 is now entitled to four representatives. The proposed amendment would change the number 1,200 to 1,500, so that the town of 5,000 would have three representatives. It is, of course, obvious that all the reduction will be gained at the expense of the larger towns and cities; but the small towns had the votes in the convention to put the new plan through. It is very unlikely that it will be adopted by the voters, as a two-thirds vote is required.

Various proposals which were rejected would have provided, in one form or another, for legislative submission of constitutional amendments to the people, New Hampshire now being the only state in which the legislature is powerless in this matter. After considerable debate, however, and a final close vote (165-182), all were defeated. The reason for this action deserves a word of explanation, for it would never be apparent to one reading the journal of the convention. The proposals were of two kinds. The first was to turn the legislature into a joint convention for the consideration of amendments, as in Massachusetts. Those who favored this were obviously and frankly actuated by their distrust of the Senate, a body numbering only 24, and well-known for its extreme conservatism, to put it mildly. The second proposal was of the more usual type, requiring a two-thirds vote of the total membership of the House, plus a majority of the total membership of the Senate. Proposal one being defeated, on a voice vote, enough of its friends, probably about twenty-five, turned against proposal two to bring about its defeat also, by the close vote already stated. Hence a proposal for the moderate liberalization of the amending process met defeat at the hands of a group which insisted on the whole loaf or no bread. None of the other rejected proposals was of major importance.

Although delegates were elected on partisan ballots, the only occasion in the convention when party lines could be said to have been

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drawn was in the election of a secretary; and here precedent was followed in the choice of a Democrat, though the convention was overwhelmingly Republican.

The convention was perhaps remarkable in one other respect: there was not a single reference, direct or indirect, to the prohibition controversy.

JAMES P. RICHARDSON.

Dartmouth College.

Social Science Abstracts—an Institution in the Making.[1] "This article describes a sequence of the factors that led up to the establishment of an international coöperative effort in which more than 1,700 scholars participate. It analyzes the process of organizing a scientific journal which publishes 15,000 abstracts a year, based upon the systematic examination of about 400,000 articles contained in 4,000 serials which are printed in 26 languages. As a voluntary effort, *Social Science Abstracts* is of sufficient magnitude and stability to be regarded as an institution in the making."

The origin of *Social Science Abstracts* was recognition of the need of keeping informed on the important contributions to the social sciences contained in the ever-increasing volume of periodicals and serials in the literature of many countries. Successful patterns of coöperative research to solve this urgent problem existed in the great abstracting services established in the physical sciences. *Social Science Abstracts* is indebted to these services for the many transfers of essential technique.

Contacts with European scholars were made in the summer of 1928. Meanwhile the collaboration of hundreds of American scholars was secured for the preparation of abstracts. The first issue of the journal was distributed in March, 1929. By December, a complete volume containing 11,093 abstracts had been published. Volume II for the year 1930 will contain over 15,000 abstracts.

In handling 400,000 articles a year, accuracy and system are essential. The office editors select the articles to be abstracted. In order to prevent duplication, the title of each article is cleared against a great central file before mailing to an abstractor. About 18,000 titles were mailed out during 1929. In a few cases (600), responsibility

[1] Abstract of an article by the editor-in-chief of *Social Science Abstracts* published in the *American Journal of Sociology*, November, 1930.

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for an entire journal is assigned to one or more scholars. In all cases, careful selection of collaborators is a fundamental prerequisite to dependable abstracts. A systematic effort is made to maintain uniformly high standards in the selection of articles to be abstracted, and six office editors, as well as 1,800 abstractors, are urged to observe the criteria of selection outlined in the *Guide for Abstractors.* The processes of selection, checking, assignment, follow up, recording, editing, proof reading, and correspondence, as well as the business activities of financial management, bookkeeping, and circulation, take the full time of twenty persons on the central editorial staff. The office staff constitutes the center of a vast network of coöperative effort reaching out to 45 nations of the world and now (1930) embracing the collaboration of 1,300 specialists in 36 languages.

"Science has progressed by virtue of the principle of specialization, but this trend had led to divergences of such a marked nature that compartmentalism has developed to a positively vicious degree. The question is, how can the whole mass be drawn together? By what means will it be possible to integrate the work of critical specialists? *Social Science Abstracts,* in common with other great abstracting services, does this by printing the results of research in one specialty in close juxtaposition and in organic relationship with the results of other specialties. Thus there is no offense given to the sensibilities and habits of thought of the specialist, and yet the evils of compartmentalism are avoided. For the specialist may now read on the borderline of his subject and pick up new leads. He may delve into the literature of allied subjects and discover critical cross-lights on his own narrow interest.

These larger functions, dimly seen at the beginning, now emerge out of the detail of such practical and concrete services as time saving, the avoidance of duplication of effort, and the making accessible of materials, and so encourage us to believe that the abstract service will increasingly perform a valuable educational service. One assurance of this hope is the fact that with the present form and size of abstracts, the journal is a readable journal. Many of our subscribers say that they spend profitable evenings reading along the borders of their specialties, for they find that the abstracts as now written are interesting and amply reward time spent in browsing."

F. STUART CHAPIN.

University of Minnesota.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

Mandates Under the League of Nations. By QUINCY WRIGHT. (Chicago: University of Chicago Press. 1930. Pp. xvi, 726.)

This monumental work, with its very valuable appendices, contains no less than 726 closely printed pages. Of these, 29 are devoted to a systematic bibliography of the subject of mandates. In the bibliography are mentioned the titles of over six hundred publications—official documents, books, pamphlets, and articles—all dealing with some aspect of the mandates problem, and all, therefore, published within the last twelve years. When it is realized that this entire library has not only been classified and catalogued, but also most intelligently and discriminatingly utilized in the preparation of the work under review, the importance of Professor Wright's scholarly efforts will be duly appreciated. When, furthermore, the fruits of these efforts are analyzed critically and their rare qualities discovered—qualities of thorough research, attractive and orderly presentation, independent, original, and sagacious judgment—then the whole value of his achievement will appear. No one could be more impressed with this achievement than one who, as the reviewer, has for years been intimately associated with the practical working of the mandates system and intensely interested also in its theoretical implications and its historical significance. It is indeed a true privilege to be able in all sincerity to express unqualified admiration for a piece of scholarship dealing with a subject with which one is thoroughly familiar by reason not only of previous studies, but also of continued and active observation on the spot. For this privilege the reviewer is deeply indebted to the author of *Mandates Under the League of Nations.*

Professor Wright has divided his book into four parts of equal interest but of very unequal length. In the first, devoted to "The Origin and Development of the Mandates System," he has shown the system to be in substance the slowly matured product of a long evolution of colonial administration and in form the immediate outcome of the diplomatic negotiations of 1919. It seems very doubtful whether

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the future historian will find anything essential to add to or to subtract from this searching, clear, and convincing narrative.

The second part, entitled "Organization of the Mandates System," is a study of the system's actual structure and effective functioning. It is based mainly on a close examination of official documents, and particularly of the minutes of the Permanent Mandates Commission, which have never been more carefully perused and more intelligently interpreted.

The third part, which the author seems to have written with a peculiar fondness and which he proudly calls "The Law of the Mandates System," is a learned juridical treatise of nearly 300 pages. The countless legal questions, most of them connected with the underlying problem of sovereignty, which constantly arise in the course of the debates of the Permanent Mandates Commission are here calmly and judiciously examined. While displaying a keen sense of juridical analysis, the author has avoided the pitfall of narrow legalism. Realizing that in this domain—more even, perhaps, than in most other fields of international relations—law is but the maid-servant of politics (and often a very ill-treated domestic), he has not sought academically to dogmatize about the main issues, but rather realistically to understand and to explain them. He quotes contradictory opinions and often allows the reader to draw his own conclusions. Those for whom international law's main function is to serve as a guide to the evolution of the future may deem him over-discreet. But those who know how little that evolution heeds the precepts of its would-be guides, those who ask of international law that it render intelligible what has happened yesterday and that it predict what is therefore likely to happen tomorrow, will better appreciate his cautious wisdom.

The fourth and final part, entitled "The Value of the Mandates System," is a relatively brief statement of less than 50 pages. After an interesting and ingenious discussion of the methods of measuring administrative achievement, Professor Wright formulates his general conclusions. They are, like most sagacious views in political matters, neither enthusiastically optimistic nor cynically negative. Both their moderate and slightly whimsical tone and their general purport may be judged by the following quotation: "While the period of its operation has been short and the available data incomplete, it seems fair to say that the mandates system has proved a practical method for administering backward areas, more satisfactory than

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others that have been tried from the standpoint of the natives and from the standpoint of the world in general. Whether or not it has been as advantageous to the administering state as have the traditional systems of colonies, protectorates, and spheres of interest, at least none of the mandatory powers has offered to resign."

While American statesmanship is still reluctant to coöperate actively in the endeavors of the League of Nations, some consolation may be found in the fact that American scholarship and expert ability have already rendered Geneva great services. Never have they been shown to better advantage than in this remarkable treatise which, in spite of the rapidly shifting scene, is bound to remain the standard work on mandates for many years to come. That opinion the reviewer has no hesitation in expressing, both as a student of international affairs and as a servant of the League on the Permanent Mandates Commission, where the book will often, and never uselessly, be consulted in the future.

WILLIAM E. RAPPARD.

Graduate Institute of International Studies, Geneva, Switzerland.

International Arbitration from Athens to Locarno. BY JACKSON H. RALSTON. (Stanford University: Stanford University Press. 1929. Pp. xvi, 417.)

In this valuable book Judge Ralston gives the historical background for the more analytical treatment of arbitral jurisprudence in his earlier work entitled *The Law and Procedure of International Tribunals.* That book classified materials dealing with international arbitration according to the legal principles involved. The present work classifies them according to the procedure and organization of international institutions for the settlement of disputes. It contains information about the movements of public opinion favorable to arbitration, and the history of arbitral tribunals, more particularly of the Permanent Court of Arbitration and the Permanent Court of International Justice. An appendix lists over three hundred arbitral and other international tribunals which have functioned from 1794 to 1926. The texts of the first Hague Conference of 1907 and the Statute and Rules of the Permanent Court of International Justice are reproduced in full. Thus the reader has at hand a mass of facts related to the external history of international arbitration.

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The internal history has been treated analytically in Ralston's earlier volume already referred to, but additional material is added in the first part of the present volume. As is inevitable in writing the subjective history of institutions, the subjective opinions of the writer creep in. Thus, in reading this part, one discovers that Ralston believes in natural law, in the sense that "certain governing principles which control the action of men in their individual relations still rule when they are aggregated into nations" (p. 3). Evidence on this proposition might be found by examining the extent to which international courts have actually relied on private law analogies. Lauterpacht has done this, but though Ralston refers to Lauterpacht's book in a footnote, he seems to doubt whether natural law in its relation to international affairs can be discovered by this method. "International law and international tribunals take little note of anything approaching the natural law of which we speak. Infinite violations of natural law, proved to be violations by their deleterious consequences, have as yet made scarcely any impression upon the minds of writers on the law of nations" (p. 4).

Ralston thus finds natural law by observing consequences and also by *a priori* reasoning. "The fact is," he writes, "that so long as human beings are human beings, and governments and nations represent but aggregations of human beings, the whole cannot lose the basic human qualities of the units" (p. 3). This argument seems to beg the much mooted question whether an organization can be something quite different from the sum of its parts. Certainly, states and individuals differ in a good many characteristics, as for instance in mobility, and it may be added in conceptions of justice, as Ralston himself insists in the passage previously quoted. Natural law thus seems to be in Ralston's mind an ideal to be striven for, rather than a standard to be discovered in the materials of international litigation.

Among other general subjects treated in the early chapters is codification, which the author thinks may easily be pushed too far and too fast. "An attempt, therefore, to tie down future generations to the opinions of those now living may prove to be an exceedingly dangerous experiment, bearing in mind our narrow limitations of knowledge with regard to the workings of international affairs" (p. 12).

The distinction of arbitration from judicial settlement as a process permitting of more consideration for political factors is rejected un-

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less a special provision is made in the *compromis*. "Arbitrators," he writes, "have a duty to act under the guidance of law, and that they usually do" (p. 26).

With respect to the limits of arbitration as a mode of international settlement, the author attempts to refute the argument of Admiral Mahan, which he interprets to mean that disputes which a powerful state can settle more to its advantage by diplomacy or force are not justiciable (p. 42). Nevertheless, he believes that independence which is assumed on submitting to arbitration cannot itself be arbitrated (p. 31), and that domestic questions, for which he offers a definition, are likewise excluded (p. 44).

When the author turns from the broader philosophy of arbitration and law to the details of arbitral procedure and practice, he is obviously more at home. His extensive experience as an umpire of several arbitral tribunals here becomes evident. The remarks on the difference between arbitrators of common-law and of civil-law training are illuminating, the conclusion being that the differences between these two systems of law are not so great as often supposed, relating mainly to certain rules of evidence, of inheritance, and of personal status (p. 83). Among other interesting topics discussed are the finality of arbitral awards and the necessity of sanctions. The circumstances justifying rejection of awards are set forth (pp. 94-99). And the author expresses his confidence in public opinion as a guarantee of good faith in carrying out valid awards under normal circumstances (p. 109).

While flaws can be found in the arrangement of the book, and in the consistency of some of the author's generalizations, students of international law and relations will welcome the vast amount of useful material it brings together and the many wise reflections of the author upon practical problems of international arbitration and the pacific settlement of disputes.

QUINCY WRIGHT.

University of Chicago.

The Public International Conference; Its Function, Organization, and Procedure. By NORMAN L. HILL. (Palo Alto: Stanford University Press. 1929. Pp. xii, 267.)

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The Practice and Procedure of International Conferences. By Frederick Sherwood Dunn. (Baltimore: The Johns Hopkins Press. 1929. Pp. xiv, 229.)

The appearance of these two books within a year indicates a growing appreciation of the importance of international conferences in the contemporary world. If more proof is needed, the reader may peruse the statistics offered by Mr. Hill showing the steady increase in the number of international conferences per year and also in the average number of states attending each. Though a public international conference is usually easy to recognize, it is not easy to define. Public conferences shade into private conferences and international conferences into national conferences. Mr. Hill discusses the British imperial conferences and the Assembly and Council of the League of Nations, but Mr. Dunn considers both outside the scope of his work. "The League," he says, "is in law a *persona* . . . . a corporate entity with a definite capacity for action and a 'will' of its own, apart from the separate 'wills' of its individual members;" so its organization and procedure are special topics which need not be discussed in a general consideration of international conferences (p. 31). Later he notes that while the League was originally conceived by its founders as a system of traditional diplomatic congresses, the first Assembly adopted rules which looked as though they had been drawn by parliamentarians (p. 189).

This difficulty is, in fact, the theme of Mr. Dunn's book. Even among meetings which are clearly public international conferences, there is an inconsistency in practice and theory. Sometimes they act like parliaments and sometimes like diplomatic gatherings. This points to a general distinction between *legislative* and *bargaining* conferences; though sometimes both elements appear in one conference. The atomic conception of the nature of international society preserves certain procedures, even when efficient functioning suggests that they be dropped. The rules of unanimity and of equality of states are in point. However, function tends to control procedure. More and more, conferences tend to adopt procedure which will expedite the achievement of the objects of the particular conference. As the objects vary greatly, so do the procedures, and Mr. Dunn agrees with the League committee on the codification of international law that general rules of conference procedure are not at present a fit subject for codification.

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Though the subject is the same, the two books have little in common. Mr. Hill looks at conferences from the outside. He gives some statistics and tells something of the formal character of these gatherings. His book is of value for reference, but the reader gets little of the feel of international conferences from it.

Mr. Dunn gets much nearer to the heart of the matter. He sees world conditions that are changing, necessities of life that call for conferences of many kinds and continuous adaptation of method to purpose, with at the same time certain limitations fixed by the necessities of conference action and the prevailing concepts and prejudices of statesmen and international lawyers. He examines the leading conferences since 1825 in detail with reference to such points. While his concluding generalizations in regard to the initiative in calling, the membership, the agenda, the delegates, the officers, the parliamentary rules, records, and results are illuminating, the reviewer regrets that more attention was not given to the considerations which should govern the inclusion or exclusion of a given state in a given conference.

Mr. Hill's book includes as appendices a list of conferences (p. 229) from which some of those mentioned on page 25 are for some reason excluded, instructions to the delegates to certain conferences, sample agenda, and a bibliography. Both books have brief indexes.

QUINCY WRIGHT.

University of Chicago.

Problems of the Pacific, 1929: Proceedings of the Third Conference of the Institute of Pacific Relations, Nara and Kyoto, Japan, October 22 to November 9, 1929. EDITED BY J. B. CONDLIFFE. (Chicago: University of Chicago Press. 1930. Pp. xv, 697.)

As Dr. Condliffe points out in his preface, the conference of the Institute of Pacific Relations at Kyoto was "not an isolated event. It was part of a developing process" (p. v). As a result, the editor has "digested" (p. v) the discussions at the various round-tables and "arranged the material in a historic setting with reference both to the discussions of former Institute conferences and to general developments in the field in question since the last conference" (p. vi). While one cannot help but admire Dr. Condliffe's zeal in setting himself to such an ambitious task, it must be pointed out that the result is not a record of the round-table discussions. It is true that

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"at each round-table recorders took careful notes of the discussion" (p. ix) and that "from these notes they dictated the reports which have been used in preparing the summaries of round-table discussions published in this report." It is nevertheless difficult as one reads Part I of the book, entitled "Summary of Round-Table Discussions" (pp. 3-244), to determine how much of it is actual summary and how much presents the views of Dr. Condliffe. It is to be regretted that the reports of the discussions as prepared by the recorders were not published, with footnotes by the editor.

Eight subjects were discussed at the round-table conferences, and, as stated above, the discussions are "digested" by the editor in Part I. The chapters on "The Machine Age and Traditional Culture" (pp. 3-35) and "Industrialization in the Pacific Countries" (pp. 65-83) are replete with information presented in a concise manner. The chapter on "Food and Population in the Pacific" (pp. 33-64) can best be described by its final sentence: "The chapter closes as did the round-tables on food and population with a consciousness of many factors yet to be uncovered before the approach to the solutions of the problem is begun" (p. 64). One gains the impression from a reading of the summary of the discussion as published in this chapter that a board of censors was present, although whether the board was present during the discussion or when the summary was prepared it is impossible to determine.

The second part of the volume (pp. 247-620), entitled "Documents," contains fifteen papers. Thirteen of these deal with the situation in China and Manchuria. One cannot help but regret that a few more papers were not included which related to problems existing in the Pacific regions west of the 180th meridian. A paper on "The International Settlement at Shanghai" by "A Member of the British Group, I. P. R." gives a brief but excellent historical review of this subject. The author points out that "two solutions have been suggested." One is to make Shanghai a "free city," and under this plan "the executive and judicial branches of the administration would derive their authority from the same source—the court would become a municipal court—and all difficulties of course would disappear" (p. 366). The author expresses his belief that "unfortunately that solution is so impossible as to be fantastic." He then refers to the second solution and states that "the Chinese solution is equally simple: hand over the settlement to complete Chinese control" (p. 367).

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The conclusion is that "though this may be the ultimate destiny of the settlement, few people would deny that the time is not ripe for such a consummation" (p. 367).

Two other papers in Part II which are deserving of careful study are "The Relinquishment of Extraterritoriality in China" and "The Tariff Autonomy of China," both by Dr. Mingchien Joshua Bau. Needless to say, these papers present briefs for the Chinese position on the issue involved, and although one may not agree with all of the author's conclusions and recommendations, it can scarcely be denied that he pleads his case in a forceful and brilliant manner. Another very able paper is entitled "The Future Development of the Wheat Growing Industry of Australia," by Mr. A. H. E. McDonald. Those who believe that the farmer produces too much will find cause for alarm in this monograph.

Part III, entitled "Appendixes" (pp. 623-679), contains such information as a "List of Conference Members, Observers, and Staff," "The Conference Program," "The Biennial Report of the General Secretary," etc.

EDWARD C. WYNNE.

Washington, D.C.

World Politics in Modern Civilization. By HARRY ELMER BARNES. (New York: Alfred A. Knopf. 1930. Pp. 608.)

As the author in his preface assures the reader, this volume is "designed to present and appraise the leading trends in world politics and international relations since the period of the discovery of America"—an undertaking of broad scope and carried out with broad strokes, resembling in most part a set of notes or lectures based on secondary sources and hastily thrown together. The book warrants a review only as an example of the sort of writing which had better have been left unprinted. In spite of the Note of Acknowledgment addressed to a long list of authorities who have "rendered invaluable service in making useful suggestions and detecting errors of fact and judgment," the work abounds in gross generalizations, and in errors where the author has ventured into fields apparently not covered by readily available source material (as for instance in Chapter VIII). The author generally assumes a broad and liberal attitude toward questions and issues, as in his chapters on capitalism, imperialism, the peace movement, and World War guilt; but substantial text is in-

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variably lacking in support of these generalizations, except perhaps for the chapters on war guilt, which are drawn largely from a previous book of the author's and the work of Professor Fay.

The book under review can be described briefly as a series of notes and quotations, based, as the author says, on the classifications in Moon's *Syllabus of International Relations,* thinly drawn out to produce an effect of breadth and inclusiveness, but with the paucity of substance readily apparent in spite of the attempts to cover up by means of facile generalizations. It is apparent that the author's appraisals are not logical deductions drawn from the context, but rather represent *a priori* or anterior opinions bolstered up by whatever material was available at hand. This dipping into the many aspects of international politics, together with the vigorous style of presentation, may serve to stimulate the general reader. The author's assertion that his book "possesses much more academic novelty and potential utility when viewed from a quite different angle, namely, as a topical history of modern times," will, however, hardly impress the teacher of either modern history or international relations.

M. W. Royse.

Harvard University.

Turkey Faces West: A Turkish View of Recent Changes and their Origin. By Mme. Halide Edib. (New Haven: Yale University Press. 1930. Pp. xiv, 273.)

Mme. Edib is singularly well qualified to act as interpreter between the new Turkey and the American world. Brought up in the Constantinople of Abdul Hamid II, living through the revolutions and the régime of the Committee of Union and Progress, experiencing the vicissitudes of four wars, participating as novelist, feminist, and teacher in the movements which were remaking the Turks, exercising her greatest direct influence as a virtual member of the cabinet in the critical years of the war with Greece, she was, on the other hand, brought early into connection with American schools and found later many American friends. Exiled in 1925 from Turkey for advocating such a two-party system as in August, 1930, was encouraged by President Mustapha Kemal Pasha, she wrote in excellent English of her experiences in two substantial volumes, the *Memoirs* and *The Turkish Ordeal.* Now she presents in a more interpretative way her matured analysis of what has been happening

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in Turkey, not without illuminating observations upon the progress of ideas elsewhere in the world.

While the scope of the book's outlook is general, the thread of politics is visible throughout, from the stern, fierce imperial system of Jinghiz Khan, through the installation of a growing Turkish power in Anatolia and Eastern Europe with much incorporation from the complicated decadent structure of the later Roman Empire and much influence from the theocratic elements of Islamic law, to the great imperial period of the sixteenth and seventeenth centuries, the attempts at salvation through "reform" of the nineteenth century, and the transformation from an expiring empire to a vigorous small nation in the early twentieth century. Distinguishing the imperialistic Ottoman from the nationalistic Turk, she regards the latter as essentially democratic, practical, and progressive.

Two-thirds of the book is devoted to the years since 1908, during which the great transition was accomplished. The young Turks of the nineteenth century had been "idealistic and Ottoman." Those of the twentieth century were "realistic and Turkish." They suffered many disappointments, as when the older generation was slow to bring the constitution into action, the non-Turkish elements were averse to coöperation, and Italy seized Tripoli. They lost control, and the Balkan states declared war. The young Turks seized power for themselves during that struggle, and retained it until the end of the Great War. Discredited by defeat, they disappeared. A new group saved Turkey from subjections and built up a new government. At first, this was extraordinarily simple, all powers being lodged in the Grand National Assembly. With independence, the old limited monarchy was entirely swept away and a republic was proclaimed. Internal disunity threatening while the form of the constitution of 1924 was maintained, a virtual dictatorship under emergency laws existed from 1925 to 1929. A new phase begins after the lucid narrative of Mme. Edib ceases.

ALBERT H. LYBYER.

University of Illinois.

Staatkundig Beleid en Bestuurszorg in Nederlandsch-Indië. By A. D. A. de KAT ANGELINO. Part I, Grondslagen en Richtlijnen van Koloniale Beleid, 2 vols. Part II, De Overheidszorg in Nederlandsch-Indie, 1 vol. (The Hague: Martinus Nijhoff. 1929, 1930. Pp. 1395, 763.)

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These volumes constitute a very welcome and important contribution to the literature on colonialism and the relations between East and West. Much has been written in recent years on all other countries of the Far East, but there has been no good general work on the Dutch East Indies since Clive Day's *The Dutch in Java,* published some twenty-five years ago. The importance of the Dutch East Indies in world economy and in the Far Eastern situation certainly demands such a study. The importance of the East Indies has been strangely overlooked. It has four times the area of Japan and six times that of the Philippines, a population approaching that of Japan, and a strategic location at the crossing of two important world trade routes. Interest in this insular empire is increased, now that the ferment of nationalism is at last working its upheavals in this great Far Eastern dependency.

The author sees his problem in large perspective. He is not content with a mere treatment of Dutch colonial policy and administration, but feels that he must lay a broad base for this treatment by a searching examination of the bases of the colonial relationship and the function of colonial government. In fact, the author devotes so much space (two of the three volumes) to the general problem of colonialism that one is a bit puzzled to know which purpose was uppermost in his mind. This lack of proportion is no doubt to be explained by the fact that the author undertook to write a book on Dutch colonial policies at the request of the minister of colonies, while his personal interest is predominantly in the general problem. But the result is a book with a far wider appeal than one dealing solely with Dutch colonial policies, especially since colonialism is now everywhere on the defensive.

Mr. de Kat Angelino sees the fundamental justification and function of the colonial relationship as a phase of the world problem of the reconciliation of East and West, and sees a solution of the problem in a synthesis of their cultures. The Western world, a dynamic, mobile world, conquering "time and space," is making a tremendous impact on a static, stationary world, bound to the "here and the present." This synthesis has the best chance of success under the colonial relationship. Unless this inevitable and not undesirable meeting of the East and West takes place under conditions of wise leadership and thoughtful protection, the result will be an impoverishing, instead of an enriching, of human culture, will endanger the future

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peace of the world, and will cause the disintegration of Eastern society. The chief function of colonial administration in accordance with this view is the protection and strengthening of native society, in order that it may be prepared to take its separate and equal station in the world community. As objectives of the colonial task in the future, the author lays down the following: enlarging of the social horizon, since until the East is freed from its narrow particularism it cannot make its contribution to the synthesis; enlisting of the native élite in coöperation in leadership; differentiation in accordance with need; the transformation of the sterile and destructive nationalism of the antithesis into a fruitful and constructive nationalism, animated with the spirit of the synthesis; and, lastly, the transformation, without too many shocks, of the mechanical structure into an organic order. In the last volume the author examines the Dutch colonial policies in the light of the above views, and comes to the conclusion that they are tending increasingly in the direction of the synthesis.

These volumes deal with large themes, and many students will disagree with some of the writer's interpretations and positions, though all must respect the searching manner in which he treats his problem. Many will disagree with his appraisal of Western and Eastern civilization, but all must grant that he has reëxamined the bases of both civilizations with pick and shovel. Many more will doubt whether Dutch colonial policy, enlightened as it is, has been as much directed toward the synthesis as the writer concludes. And probably few will agree with his underlying assumption that pursuance of the objectives he lays down will save the East Indies for a harmonious union with the Kingdom of the Netherlands in an imperial relationship. The experience of the British Empire with its self-governing dominions, overwhelmingly peopled with men of the same race and culture, hardly warrants such optimism.

Mr. de Kat Angelino is exceptionally well qualified for the task he undertook. He has spent many years in the East Indian service as an adviser on Chinese affairs, and previous to that spent some six years in China in preparation for this work. During the past few years he has been attached to the ministry of colonies and has represented his government at many important international conferences. It must not be assumed that because of his government connection these volumes are semi-official propaganda, for government officials in the Netherlands are free to criticize their government, and exer-

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cise that freedom to a degree unknown in this country. Dutch colonial officials seek to overcome their military weakness by a thorough knowledge of native society, and for this purpose they are well equipped by their academic training. They take a scientific interest in their work, and Dutch colonial literature is, as a result, remarkable for both its quantity and its quality. This wealth of literature Mr. de Kat Angelino has thoroughly digested. He brings to his work a fine sociological and philosophic insight. This study is fortunately to be made more widely available by an abridged English translation which the reviewer understands is shortly to be published.

AMRY VANDENBOSCH.

University of Kentucky.

The Philippines, Past and Present. By DEAN C. WORCESTER, with footnotes by RALSTON HAYDEN. (New York: Macmillan Co. New edition, 1930. Pp. xii, 862.)

Worcester's record of conditions in the Philippines, based on his study while they were still under the control of Spain and his fourteen years of experience as a member of the Philippine Commission, has become the accepted account of the accomplishments of the United States in the Islands. This new edition, except for minor excisions, presents the author's original text. Footnotes by Ralston Hayden supplement the record by statements of changes since the volume first appeared in 1914.

Additions to the book are an eighty-page biographical sketch of the author, thirty-five pages discussing developments since 1914, and appendices discussing special phases of recent developments. The biographical chapters are an excellent short-length portrait of Worcester as the distinguished colonial administrator that he undoubtedly was. Few men, if indeed any others, have made so enviable a record in service in the territories outside the continental United States over which the republic has come to exercise control since the turn of the century.

The discussion of the period since 1914 is chiefly political and suffers from the limitations which are felt in all contemporary estimates. The author keeps a non-partisan viewpoint, but does not hesitate to point out the mistakes which were made at the inauguration of the Filipinization program. How serious these were it is still difficult

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to estimate. The interpretation of the Jones bill as a measure intended to sanction giving to the local population complete freedom of action except in affairs involving external sovereignty undoubtedly was a serious mistake. Development of "Filipine institutions" of an extra-constitutional sort soon brought about a highly unsatisfactory state of affairs in which public services became exceedingly inefficient and public finances were dangerously unsound.

Only the vigorous assertion of a greater degree of American control prevented a demoralization which would have brought the loss of much of the advance which the coöperation of Filipinos and Americans had achieved in the decade and a half following the cession of the Islands. The steps taken by General Wood and Acting Governor Gilmore the author considers to have done much to bring back the character of administration to that of its best years, a standard somewhat relaxed in the governorship of Mr. Stimson. In the period since 1921, however, the Filipinization of the personnel of the government forces, it is shown, has not been abandoned, but the improvement achieved has been through more vigorous insistence on standards of efficiency by a smaller number of Americans in coöperation with able Filipino associates.

CHESTER LLOYD JONES.

University of Wisconsin.

Porto Rico and Its Problems. By VICTOR S. CLARK AND ASSOCIATES. (Washington: The Brookings Institution. 1930. Pp. xxxv, 707.)

This volume is the report of a survey of Porto Rico made in 1928-29 by the Brookings Institution. The survey director was Dr. Victor S. Clark, former editor of *The Living Age,* and the author of *History of Manufactures in the United States.* With Dr. Clark were associated Dr. Frederick H. Newell, president of The Research Service, Inc., of Washington; Professor J. A. Dickey, of the University of Arkansas; Professor Erich W. Zimmerman, of the University of North Carolina; Mr. Hugh J. Reber, formerly of the American Financial Commission in Persia; Dr. Frank Tannenbaum, author of *The Mexican Agrarian Revolution;* and Messrs. Henry P. Seidemann and Charles L. Dearing, of the regular staff of the Brookings Institution. Collaborating with this able group in making the analysis of the problem and formulating the recommendations was a committee consisting of Cleona Lewis, Leverett S. Lyon, Harold G. Moulton, Edwin G.

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Nourse, and William F. Willoughby. The director of the survey and Dr. Willoughby both brought to the task in hand extensive experience in the government of Porto Rico. The former was commissioner of education during the early days of the American régime; the latter served successively as treasurer of the Island and as insular secretary and president of the executive council from 1901 to 1909.

The survey, the authors state, is "primarily a study of the possibilities of a more effective utilization of the island's natural and human resources." Detailed studies have been made of the economic, sociological, and political aspects of this problem, and definite recommendations are made for its solution. The fundamental conclusion of the investigators is that excessive growth of population lies at the root of Porto Rico's economic difficulties. Low wages, unemployment, and inadequate subsistence have followed the unchecked increase in the population of the island. The condition of the masses of the people remains deplorable. Ignorance, disease, lassitude, and general hopelessness mark the *jibaro* now, as in 1898. Although the standard of living, on the whole, "appears to be somewhat higher than it was thirty years ago, there is no evidence to indicate that it has been improving in recent years. Indeed, it is possible that since the war period conditions have grown gradually worse."

Emigration, the more effective utilization of the physical resources of the country, industrialization, and improved marketing facilities are the chief remedies suggested. Industrialization and highly organized production call for the additional investment of mainland capital and other external stimulants. They also demand the training of the people in a new kind of life. Definite suggestions are made as to progress by these means. But, after all, "the people of Porto Rico . . . . have bred up to—and indeed beyond—the normal subsistence line. It is useless to blink the fact that as long as this continues, permanent economic betterment for the masses is impossible. Education in parental responsibility (Is this a euphemism for birth control?) provides the only remedy."

Among the political changes that the survey has suggested are: the creation of a unicameral legislature, the abolition of senate confirmation of the governor's appointments, a redefining of the duties of the auditor and provision for his becoming a deputy appointed by the comptroller-general of the United States, improvement in budgetary procedure, a fundamental readjustment of the jurisdiction

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and function of the municipal governments, a repeal of the futile 500-acre law applying to corporations engaged in agriculture, and an extension to Porto Rico of all federal aid now given to states under the Smith-Hughes and other similar acts.

The authoritative study that has been made by the Brookings Institution should bring forcibly to the attention of the American people and the government the painful fact that after thirty years of American sovereignty in Porto Rico very little permanent progress has been made toward placing the inhabitants of that island upon a plane of life which might be regarded as the absolute minimum for citizens of the United States. Modern scientific research has clearly stated the problem, set forth many of the facts, and suggested methods of solution. It will now be interesting to observe whether, as was the hope of its originators, this study will be made the basis of political and economic action.

RALSTON HAYDEN.

University of Michigan.

Liberty and Despotism in Spanish America. By CECIL JANE. (Oxford University Press. 1929. Pp. 177.)

Mr. Jane's thesis is that the character of Latin American governments is explained by the devotion of their peoples to the ideals of individualism and efficiency—ends which for people of Spanish background, though eagerly sought, have been incompatible. He finds that in Spain itself and in the colonies political organization has divided on these opposing principles, that one party regularly espouses the cause of individual rights, even to the point of opposing all restraint, while the other is so devoted to the cause of good government that it is willing to yield almost any degree of authority to him who can show himself capable of securing results. The interplay of these influences alternately in control, or evidenced at the same time in different districts, is given as the cause of the retarded and irregular development of the Spanish colonial system and of the turbulent history of the Spanish American states.

Whatever the disadvantages resulting, these two ideals, distinctively Spanish, will, it is argued, continue to dominate the governments south of the Rio Grande. The revolutions which brought the breakdown of the old colonial system rose from an assertion of Spanish ideals against others which had come into control in the mother country.

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British, French, and North American influences were negligible in bringing the change, and have continued so since the establishment of independence. Spanish political ideas have always been dominant. Local government was vigorous in the colonies, and from it almost alone were taken the elements which found their way into the constitutions and legislative practices, though it be true that in form, but in form only, the phraseology of the former shows an adoption of the foreign models.

The author has given an excellent demonstration of the rôle of the two phases of Spanish idealism in the governments of the new world, but to many it will seem that he has emphasized them to so great a degree that other factors which help to explain the character of Spanish American governments are neglected. Generalizations as to their character, indeed, both in the colonial era and in our own time, are in themselves deceptive; for in many respects the influences which have shaped, and shape, them are highly diverse. Guatemala and Argentina, Costa Rica and Paraguay, are all Spanish American states, but the influences that determine the degree to which liberty and despotism are found within them are by no means uniform. Latin American governments are like a large fabric in which in different portions appear materials of different colors and composition. There is, throughout, the warp of Spanish influence, but it does not uniformly influence the product. The character of aboriginal stocks, immigration, natural resources and their development, communications and commerce—these, among other factors, influenced greatly the character and development of Spanish American governments in the colonial régime and are in our own day of increasing significance in determining the degree of liberty and despotism found within them.

CHESTER LLOYD JONES.

University of Wisconsin.

History of Chinese Political Thought. By LIANG CHI-CHAO. Translated by L. T. Chen. (New York: Harcourt, Brace and Co. 1930. Pp. 205.)

This volume is compiled from a series of lectures delivered by Liang Chi-Chao to students of law and politics in 1922. The first part of the book consists of a study in history and theory of the origins

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and nature of Chinese political philosophy as it was developed by the outstanding thinkers of the late Chou and Tsin periods (550 to 220 B.C.). Here we find summarized and analyzed characteristic thought of the Taoist, Confucian, and Legalist schools, with special chapters given over to Mencius, Hsun Tzu, and Moti. The chapter on Moti is especially worth while. Liang discriminates to a fault between what he considers genuine and spurious in these classics—an important discrimination, to be sure, to a student of history, but a discrimination which mars correct conclusions in regard to political theory, for spurious interpolations are, in the main, for studies in theory, as valid as the genuine originals.

The second part of the book consists of essays arranged so that the doctrines of the masters are brought out in connection under such headings as: "On Chinese Theocracy," "On Democratic Ideals," "Politics and Ethics," "Unification Movement," "Disarmament Movement," and "On People's Rights." To the average reader, the first part of the book will be more interesting, but to the student of political thought the second part will prove more valuable. Much that is in the first part has been available in English for some time. The second part gives a Chinese scholar's confirmation of many conclusions which Western students of Chinese thought have already drawn.

Important as the contents of the volume are, the authoritative conclusions of the writer are even more important. Mr. Liang (1873-1929) was a great scholar and a reformer. When only twenty-five years old, he was called to the presidency of the Hunan Provincial College at Changsha. During the period of Kang Yu-Wei's proposed reforms in the last decade of the nineteenth century, and during the time he wrote while in exile before 1911, no writer on politics influenced Chinese contemporary thought more than did Liang. He lived and died a Confucianist. He could, therefore, be described in present-day political terms as a constitutional monarchist. In fact, in 1911, after the overthrow of the Manchus, he organized the Constitutional Monarchy party as a rival in the republic to Sun Yat Sen's Kuomintang. When, however, Yuan Shih-Kai attempted to restore the monarchy, with himself as emperor, Liang was found among his opponents. Liang held office under the republic in 1914 and in 1917, each time for but a brief period. His outstanding contribution to Chinese scholarship is that for which we have mildly

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criticized him above, viz., his exactness in dealing with historical material. He has applied scientific and critical methods in the study and the teaching of the Chinese classics.

The translating has been well done. It was a happy thought of Mr. Chen to add a glossary of Chinese characters. Until transliteration has become standardized, the glossary will always remain a necessary aid. The purpose of Liang's lectures and the spirit of their presentation may be shown from the following paragraph taken from the book's preface: "During the last two decades China has tried to transplant, one after another, the political institutions of Europe on to her own soil. Constitutional monarchy has been tried, republicanism, confederacy, sovietism; all have been tried as though China desires to try every form of existence. In reality, nothing but the name has been introduced, and confusion is made more confounded. For when an institution whose roots are not among the people is introduced from the top, it is like plucking the flowers of a neighbor to embellish the dying branches of one's own tree; there can be no life. The bitterness of disillusion now drives her leaders to rally under the banner of a reconstruction of thought. This requires a constructive effort. In order to cast out the old, there must be a satisfying new to take its place, or society would fall into scepticism, and would revert to the inertia of traditional thinking. The reconstruction of China's thought is not to be accomplished by the wholesale transplantation of the thoughts of another society; it must follow the natural development, and must begin with the proper retention of elements of the old social heritage."

In this day of China's strife and turmoil it is refreshing to get back to the great fundamentals!

ELBERT D. THOMAS.

University of Utah.

The Development of American Political Thought. By WILLIAM SEAL CARPENTER. (Princeton, N.J.: Princeton University Press. 1930. Pp. vi, 191.)

This brief volume does not aim to trace the development of American political thought throughout the whole period of American history. Neither is it interested, primarily, in the controversial issues of American politics. It is concerned, mainly, with the process by which the liberal thought of seventeenth-century England, transferred

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to America, was adapted, under the conditions of a new country and the experience of self-government, into those fundamental doctrines upon which the American system of government was based.

The first chapter, entitled "Contract and Controversy," deals with the colonial controversies over the relation of church to state, and with the importance of the concepts of natural law and of social contract in early American thought, especially in the period preceding the American Revolution. The second chapter, entitled "The Balance of Power," discusses the theory of separation of powers and of checks and balances in government, and gives examples of the application of these principles in the qualifications for voting, the system of representation, and the relations among the various departments of government.

In the third chapter, "The Foundation of Democracy," the author discusses the ideas of the men who were most influential in framing the American Constitution, and shows how some of the compromises in that document resulted from the diversity of opinion between aristocrats and democrats, and between the supporters of a strong government and the believers in states' rights. He makes it clear that most of the leading thinkers of that period were doubtful of the political ability of the masses. The following chapter, "American Individualism," shows the early association of individualism with democracy, resulting from the economic conditions in America, the prevalent belief in natural rights, and the influence of the Physiocratic economics. The author traces the breakdown of the individualist policy after the War of 1812, especially in connection with the tariff. Finally, the association of individualism with the interests of the slave-owners marked the death of the doctrine and the adoption, instead, of the theory of majority rule. The next chapter, "The Principle of Majority Rule," traces the gradual adoption of the democratic principle in the widening of the suffrage, and the final attempt of Calhoun to prevent majority control. A final chapter, entitled "Some Recent Tendencies," discusses the American doctrine of sovereignty and of law.

This book is a scholarly study of some of the fundamental concepts in American political theory, and will be useful to all students of American history and government. The footnotes contain valuable references to source material. As a treatment of American political

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thought, however, the volume is decidedly sketchy and needs to be supplemented by wide reading.

RAYMOND G. GETTELL.

University of California.

Nationality, its Nature and Problems. BY BERNARD JOSEPH. (New Haven: Yale University Press. 1929. Pp. xxiv, 380.)

Dr. Joseph's book is at once an analysis of the elements which contribute to a sense of nationality and a justification of it as a principle in accordance with which the human race can be organized into homogeneous groups. It is important in this treatment to note two points. Mr. Joseph distinguishes between nationalism and the sentiment of nationality. The former he endeavors to define as either the historical process of establishing nationalities as political units or as "a movement to manifest the sentiment of nationality." Further, he sharply distinguishes the concept of nationality from that of citizenship of a state and of "national sovereignty," and maintains that the only hope of peace and order is to be sought in recognition of the principle that several nationalities may live together in harmony and coöperation within a state, each following its own national life.

It is questionable whether Mr. Joseph can make good his distinction between nationalism, the sentiment of nationality, and the sentiment for a territory. He himself admits that patriotism "maintains national consciousness" and also involves devotion to one's "country." The three ideas become linked. We are not, however, entitled to stamp with approval a sentiment unless we have first taken into account its probable abuses, as well as its uses, in a political utopia. Mr. Joseph endeavors to prove that since wars flourished before the sentiment of nationality became dominant, war cannot fairly be regarded as a consequence of nationality. But surely this is a *non sequitur,* if we mean that the sentiment of nationality cannot be regarded as one major cause of wars. As Mr. Joseph himself says, "a business man in developing his own establishment receives encouragement from the feeling that he is sharing in the conquest of a foreign market for his country." He does indeed!

It may, of course, be replied that whether we approve or disapprove of nationality does not affect a description of its nature and problems: it exists whether we like it or not. Mr. Joseph, however, chooses to essay an "estimate of nationality." Further, it may be doubted

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whether nationality exists in the sense in which a pound of butter exists. It is one of those things of which "thinking makes it so." As Professor Hankins most excusably says, "nationality is not readily definable." In chapter after chapter, Mr. Joseph analyzes the elements of nationality—race, language, territory, and the rest—and in each case he has to admit that the element is not entire, indispensable—is not, in fact, an element. It is a factor conducive to building up a sentiment. In the end, Mr. Joseph is driven back to something like Renan's conclusion. It is (in part) "the subjective corporate sentiment permanently present and giving a sense of distinctive unity to the majority of the members of a particular civilized section of humanity, which at the same time objectively constitutes a distinct group by virtue of possessing certain collective attributes." The point is that these collective attributes which the plain man thinks go to constitute nationality, and about which the popular press fans his sentiment, are, in many cases, speaking scientifically, sheer illusion. We are dealing with a sense of common tradition, a "characteristic mode of thought and life." "Nationality" in Trieste and "nationality" in Chicago mean almost entirely different things, by all external tests. Nationality is not something that exists objectively, but rather a sentiment, attaching itself fitfully to objective things, which sentiment can be "played up" or "played down" by national leaders and popular propagandists. A nationality, as distinct from the sentiment of nationality, simply denotes the group of people, organized or not, who admit to the sentiment or have it imputed to them.

Many of the exponents of the virtues of nationalism (I use the phrase advisedly, merely as synonymous with the rational principle of the sentiment of nationality—there may be a temperate nationalism) most properly point out that the civilization of the world is impoverished when no "little platoon" is permitted between the individual and cosmopolitan humanity, that nothing is gained by denying the contribution to the variety of civilization of groups of like temperament and tradition who wish to live together (including even all Indians, who do not constitute, in Mr. Joseph's opinion, a single nationality). No reasonable person wants to minimize the value to the world of a sentiment for community, founded on like-minded grouping. One wonders whether the moderate exponents of the importance of nationality mean anything more. But when nationality is elevated, as it might well be on one territory by Arabs and Jews

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in Palestine, to a sacred principle of duty to the particular racial "we-group" to which one happens to belong—whether not necessarily embodied in a sovereign state (as Mr. Joseph would have it) or so embodied—it cannot be too emphatically stated that the principle is most pernicious. There is such a thing as a very legitimate racial pride, but it is a bad master if a good auxiliary. Inconsistent with the individualistic American tradition, despite such writers as Mulford, it is yet the peculiar and threatening despot of our time Leviathan baptized by sentiment. Mr. Joseph, indeed, wants to demonstrate "the independence of nationality and politics" and that a strong sentiment of nationality need not spell nationalism. I confess, however, that it is long since I have read a book with the conclusions of which I so profoundly agree and of which the argument renders me more unhappy. I fear that Mr. Joseph cannot take the sugar of "the sentiment of nationality" without the bolus. Moreover, the dust-cover tells us that "at a time when international ideas seem to be superseding those of nationalism, this message comes as an arresting argument against the change." We hope that Dr. Joseph's publishers malign the argument in what G. P. Gooch so rightly introduces as a suggestive and scholarly book.

GEORGE E. G. CATLIN.

Cornell University.

The Dangers of Obedience, and Other Essays. BY HAROLD J. LASKI. (New York: Harper and Brothers. 1930. Pp. 293.)

Most of these essays are here reprinted from *Harper's Magazine.* They are difficult to criticise adequately, for they are discussions of some intricate questions of special interest to the political scientist, yet are addressed to the lay reader. Thus, "The Dangers of Obedience," the title essay, is good J. S. Mill; "The Recovery of Citizenship," a brief exposition of functionalism, for Little Feet; "Can Business be Civilized," R. H. Tawney for the *Harpers'* readers; "The American Political System," an introduction to Bagehot, Mill, and the Wilson of *Congressional Government* on the subject. Curiously enough, this last essay seems to take a literary view, in Bagehot's phrase, of the constitution. It is all there as set forth by the writers listed above, but with no apparent recognition of the fact of the new budget arrangements, the rise of "group representation," the increasing and decisive importance of the departmental

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experts, or, finally, of the fact that the industrious and intelligent member of either house can, contrary to Professor Laski's view, play a very important part indeed in Washington government through getting to know his subject thoroughly and making that knowledge count in committee and even on the floor. It is worth noticing, also, that there are British writers who are calling for a scheme of committees in the parliamentary system, for a fixed term of Parliament without dissolution, and other American devices; while the recent experiences with the parliamentary system in many states suggests that there is yet room for political invention. While this sentiment may be due to subjective American nationalism, at least one can suggest that the question now needs further exploring than the writings of the last century permit, as McBain and Becker have indicated.

For one thing, as indeed an English writer, Mr. Smellie, has recently pointed out, it may be possible to utilize the presidential system in such a way as to bring large functional groups outside the political organizations (narrowly defined) into the national political life through the cabinet, and relate them to the ordinary political and party leadership as reflected through Congress. This seems to be an aspect of President Hoover's present policy. Certainly it is interesting that Professor Laski, who argues for functional representative institutions in some relationship with parliamentary ones, should not explore the apparent inability of the two kinds to develop satisfactorily alongside one another. In fact, except for the supremely gifted publicist, the essay written for a considerable audience is not the most satisfactory form in which to discuss problems so complex and puzzling.

The three essays on academic problems will be of great interest to teachers. Those who have had the good fortune to study under Professor Laski will feel that in the essay "Teacher and Student" are some truths often displayed in his own generous sharing of his time and energy with those who evinced any interest in books and ideas. One could profitably push him a bit further, certainly, concerning the somewhat conventional view which he takes as to the proper subject-matter of a liberal course of study; but on materials and attitudes he says much for us all to ponder frequently, and perhaps it might be added that new and useful experience is being accumulated on these matters at several institutions in this country.

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"The Academic Mind" is slighter; one says "Of course," and goes on to the next article, which is an attack upon foundations and the present apparent direction being taken in the social sciences in this country. The numerous criticisms that have been raised by many individuals are here set forth in brief compass. Here again one wishes for more extended exploration of a problem that is not at all simple unless viewed arbitrarily in terms of an older university—and social—era. Naturally, we should all, with Professor Laski, prefer to have Professor Turner's judgment concerning a book and article to that of an abstracter (such as the present prejudiced reviewer!), but several thousand frantic teachers, attempting in vain to keep abreast of the flood of writing, may be grateful for every aid possible when they cannot all turn in person to one of the outstanding scholars of his time and country. Even Bentham had independent means—and Lord Shelburne! The important question, however, which is not discussed in this essay has to do with the fresh reconsideration of method and objective in our studies; and it is possible that even when such efforts are costly, wasteful, and full of error, they may nevertheless contribute toward stimulating just that keeping alive and pioneering in scholarship which Professor Laski would agree is essential to the good teacher.

As to the influences of the foundations on the universities (as compared with that of the clergy, professional groups, taxpayers, and numerous other groups), probably we do not have any very certain knowledge as yet except in limited fields such as medicine. This needs to be examined in comparison with other external influences upon the university and in the light of the rôle of the university in national and international life. Professor Laski elsewhere in this volume remarks, in passing, upon the fact that the syndicalist control at Oxford and Cambridge has had to yield at intervals to state commission intervention; and there are problems peculiar to university organization in this country, growing out of our vast areas and the absence of any single cultural capitol, which the Social Science Research Council may be able to attack freshly. Again, in Professor Laski's essay on "Equality" the ultimate argument is based on psychological grounds. Is it absurd, then, for the political scientist to turn to this discipline and to a study of the method of the natural scientist in order to get some new insight on methods and content that have changed so little in two thousand years? As Professor

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Frankfurter has written, "The ultimate concern of the social sciences, law among them, is the conquest of knowledge leading, one hopes, eventually to new and important insights into the good life of society. But we are still at the very beginning of this effort, and the methods, the criteria, even the aims of the social sciences, are still at large and still unshapen. There must be every inducement, every encouragement, toward originality, spontaneity, and variety, always provided that men of real capacity are engaged in the enterprise."

So closely integrated are universities and the various aspects of national life in Britain that we must expect considerable departures from that norm in the United States, where conditions are still fluid and reservations and qualifications must constantly be recognized. Professor Laski's essay may serve a useful purpose in forcing us to clarify our views, but we require much further exploration. Granted that "values" are essential to any effective gathering or use of "facts," where do the "values" come from, and how do we acquire them?

JOHN M. GAUS.

University of Wisconsin.

Tenure of Office Under the Constitution. By JAMES HART. (Baltimore: The Johns Hopkins Press. 1930. Pp. ix, 384.)

John Dewey, Mr. Justice Holmes, W. W. Cook, Judge Cardozo, and Dean Pound have set in motion the main currents in contemporary American thought which Professor Hart has so ingeniously harnessed and forced to labor in the interest of political science. His contribution lies in the fact that he has illustrated "a point of view which is useful, both in the attack upon a political problem and in a critical analysis of the judicial process." The purpose of the reviewer is to give merely a hint of what this self-criticized essay offers in the way of reasonably hopeful suggestions for the rationalizing of certain political and legal processes.

The ultimate concern of the author is to realize the "good" state as expressed in the terms of Dewey's special "publics." His immediate concern is to clarify the power of Congress to provide for public officers impregnated with the proper attitude and equipped with proper methods for making the interest of the "public" effective. Thanks to the economic revolution, "publics" are of late being thrown up at such a rapid rate that the necessary coercive powers of government have not had agencies capable of effectively wielding them.

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Legislative-and-court administration has had to give way, in large part, to administration of agencies built up in the general executive. Of these there are two types, the imperfectly judicialized and the politico-bureaucratic. The author insists that the personnel of those regulatory agencies applying policies which affect private individuals and interests should approach their problems with the scientific and judicial mind. He thinks that the scientific approach could be approximated by the selection of men scientifically trained in the field involved; by the establishment of conditions that would enable them to relate decisions to facts; by the use of the scientific method of thought as summed up in Dewey's "reflective thinking in action." To be judicially minded "is nothing more or less than [to have] the scientific attitude in the field of practical affairs." It means the possession of an attitude actively hostile to cruder forms of favoritism; complete independence from political pressure; objective consideration of problems underlying conflicting interest; decision based on reasoned judgment; the relation of decision to "the evidence, to the best obtainable opinion, and to cumulative experience." Of all the factors conducive to the scientific attitude and the judicial mind, independence is the most important; it is the key to the perfect state.

In Chapter VI is found this statement: ". . . expediency seems to dictate that Congress should have power to guarantee independence of tenure. The Constitution being silent, there is only one prior decision that could be considered to be in point: the opinion in the Myers case claims that Congress has no such power. But consideration of the case shows that a strict application of the doctrine of *stare decisis* gives us a 'rule' narrow enough to enable us to distinguish ours as a 'new' case." In the "new" case where conclusive precedents fail and history and practice are ambiguous, the interpreter of the Constitution must see that the "heart of the case" is the selection of the premises, not a problem in deduction. This choice, in terms of reflective thinking, is only the "dramatic rehearsal (in imagination) of possible lines of action." Where all available evidence conflicts with what appears from "the times" to be sound social policy, the judge should choose the alternative calculated to lead to the most desirable consequences. It is in applying this scientific method that Professor Hart forces the Constitution to yield to Congress the necessary conditioning power over tenure and removal.

Williams College. JOHN P. COMER.

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The Public Control of Business. By Dexter Merriam Keezer and Stacy May. (New York: Harper and Brothers. 1930. Pp. xi, 267.)

This is a clear, concise, temperate discussion of the important problem of government control over business. The book contains ten chapters in which the legislative, judicial, and administrative aspects of government control are reviewed. Business is made to include the "trusts," the public utilities, and miscellaneous economic organizations, such as insurance and banking companies, boards of trade, trade associations, trade unions, and farm coöperatives.

The general impression left in the reader's mind will be that the courts have added confusion instead of clarity to the anti-trust laws, and have placed restrictions in the way of administrative control of the public utilities. As to this, there can be little doubt. But behind the courts, of course, are the members of the legal profession. And the latter have had no small part in persuading the courts to adopt the many conflicting rules which at present constitute such a great hindrance to the understanding of the law.

As to the Federal Trade Commission, readers of *Public Control of Business* will no doubt conclude that this commission should be rescued from the hands of the courts by an act of Congress. And, as to the Interstate Commerce Commission, the courts, by their recent valuation decisions, will be seen to have called in question most of the important work which has taken the commission fifteen years to accomplish. Moreover, readers of Messrs. Keezer and May's book will conclude that the courts have reviewed the work of the state utility commissions to such an extent that state regulatory bodies have lost whatever dignity they may once have possessed.

The relaxation of our anti-trust laws in recent years has resulted, in large measure, from extreme national sentiment which has spread throughout all the nations that engaged in the late war. The newer competition seems to be that of nation against nation. In such a condition of affairs, combination at home has been encouraged rather than opposed. In the confusion of the times, we have witnessed our own government relaxing its efforts to bring the violators of the law to justice. This is a phase of the control of business which the authors—purposely, no doubt—leave untouched, but which, nevertheless, is an important factor in understanding the present situation.

All in all, the book is a real contribution to the field of government control. It will be helpful to students of economics, as well as to

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students of political science. It aims at, and succeeds in, describing accurately the present confusion in the law of government control.

E. W. CRECRAFT.

University of Akron.

Methods and Status of Scientific Research, with Particular Application to the Social Sciences. By WALTER EARL SPAHR AND RINEHART JOHN SWENSON. (New York: Harper and Brothers. 1930. Pp. xxi, 533.)

"Beginners, who know little or nothing of the principles of scholarly research, rely on instinctive methods which ordinarily are not rational, and consequently do not lead to scientific truth. It is imperative, therefore, that scientific investigators become acquainted with the principles of scientific methods of investigation. This book is designed for the beginner in research, particularly for college seniors and for those who are expecting to engage in research leading to the master and doctorate degrees in the social science fields." The foregoing statements are quoted from page 9 and the preface of this surprising text by two professors at New York University. The authors have dealt a body blow at instinctive research, if the compilation of a large variety of usages and precepts which *ought* to be part of the equipment of every sophomore will accomplish it.

The surprise which the reader is likely to feel as he first dips into the volume will probably be due to the expectations built up by the title. The authors have undoubtedly become saddened and pessimistic by much experience with student essays. Their book will be useful, because sophomores, not to speak, alas, of seniors and graduate students, do not in most cases possess the equipment they ought to have. As a manual of scholarly usages, as an introduction to the utilization of library materials, as a treatise for beginners on the writing of reports, as an "authors' book" on the handling of manuscripts, it leaves little to be desired. But one is not prepared to find a compendium of such matters in a treatise on scientific method or scientific research. The author's concepts of these terms are not clearly stated.

Again consulting the preface, we note that the authors seek "to provide the novitiate in research with the three most valuable tools necessary to successful research: (1) the principles of critical scholarship which appear to be most generally acceptable among the leading scholars of the world; (2) the proper technique to be used in applying

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the principles of scientific method; and (3) a general knowledge of the status of research today in those fields in which the social scientist does the major part of his research. Above all, it is the purpose of this book to give the beginner in research that proper attitude of mind without which he cannot hope to produce scholarly results'' (p. v).

Some of the principles developed in carrying out the first two of these objectives are the following, selected not quite at random: ''As the exclamation mark is used after interjaculatory phrases, clauses, or sentences expressing invocation, entreaty, command, passion, wonder, emotion, surprise, contempt, or irony, its use should be avoided in research'' (p. 311). ''Many gaps in one's information may be filled by consulting encyclopedias, almanacs, yearbooks, statistical abstracts, and similar publications'' (p. 149). ''Books are arranged on the shelves from left to right, and from the top shelf down, by their classification numbers in the order of their magnitude'' (p. 161). ''Annual cyclopedias and almanacs present annually up-to-date information and statistics on political, economic, social, scientific, and other problems'' (p. 169). ''In the choice of words the writer should use those that the probable reader will understand with the least waste of time and thought'' (p. 323). ''If one or more pages are to be eliminated after the copy has been numbered, the numbers of the omitted pages should be added to the page preceding the omission'' (p. 299). ''Usually a contract includes terms which require the author to bear a certain proportion of the cost for making corrections. On this point the author should have a clear understanding with the publisher, otherwise disappointment and disagreement may result'' (p. 353).

The last 150 pages contain an excellent résumé of the organizations, public and private, at home and abroad, which are engaged in social research.

But the reviewer hesitates to criticize, for a warning finger is projecting from page 72: ''Those who receive books for review should take stock of their capacities honestly and if they know the book is beyond their depth or field of major interest they should return it to the publisher or write a harmless descriptive review. It should be needless to say that in scholarly reviewing all the principles of critical scholarship are applied and nothing short of a mastery of these will make the reviewer competent. . . . . Perhaps some good

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could be accomplished if the author whose work suffers unjustly at the hands of the reviewer would adopt the plan of exposing the reviewer through the medium of the same periodical in which the review appeared.'' The reviewer must conceal his trepidation regarding this latter suggestion. He will hope that the editor's space has all been allotted. But if his review were not a piece of scientific research he would be tempted to conclude with that ejaculatory punctuation mark the use of which in scientific work, as noted above, should be avoided.

STUART A. RICE.

University of Pennsylvania.

Modern Political Constitutions: An Introduction to a Comparative Study of Their History and Existing Form. BY C. F. STRONG. (New York: G. P. Putnam's Sons. 1929. Pp. xviii, 385.)

This short sketch of the constitutions and constitutional law of a number of modern governments was prepared to furnish an introductory text-book for beginning students in political science. In an attempt to treat so extensive a field, it is necessary to generalize without giving due weight to the relevant facts and without sufficient recognition of variations due to different racial and political environments. The treatment of the government of the self-governing dominions is predicated upon narrow legal theories which do not accord with political practice. It is stated, for example, that the reserved powers of government are left with the federal authority of the Dominion of Canada, a proposition which no longer accords with the actual status as to the relations of the powers of the Dominion and the provinces.

The method of generalizing with little basis in fact or evidence is illustrated by the brief treatment of federalism in South American countries. A few pages on this subject contain the usual type of misinformation which elementary texts on government give regarding constitutional jurisprudence in Latin American lands.

The author aims throughout the volume to place the emphasis on the unwritten constitution, the customs, conventions, and understandings which arise in the development of constitutional law; but a distinction is made as between flexible and rigid constitutions, based upon the method of amendment, which seems too formal and impractical.

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It is strange that, in the present condition of the teaching of political science, a book of this type should be published and advertised as a basis for the study of political science for beginners. Such an introduction to the subject would not be likely to inspire confidence in the scientific basis of politics.

CHARLES GROVE HAINES.

University of California at Los Angeles.

BRIEFER NOTICES[1]

FOREIGN AND COMPARATIVE GOVERNMENT

Germany's Domestic and Foreign Policies (Oxford University Press, pp. 111) contains a series of six lectures given at the Williamstown Institute of Politics by Otto Hoetzsch, professor of history and international relations at the University of Berlin and member of the German Reichstag. A brief but interesting survey is here presented of the political and economic problems confronting post-war Germany. Coming from one of the leaders of the conservative National People's party, this booklet naturally presents the conservative's point of view toward the conditions imposed by the Versailles treaty. Professor Hoetzsch, even as one of the least conservative of his party, finds the establishment of permanent peace and economic rehabilitation in Europe unlikely without some readjustment of boundaries and reparations. Only then, in his view, can the League of Nations, the Locarno treaties, and the Kellogg Pact have their full application. As an authority on Russian history, Professor Hoetzsch makes interesting comments on the "Eastern Question" affecting German foreign policy, even if the views expressed are no longer those of an historian but of an active politician. The irreconcilable opposition to the Polish Corridor, an issue upon which most German parties agree, is candidly expressed. The general German attitude toward Upper Silesia also finds frank utterance, although Professor Hoetzsch has preferred to apply history in a spirit not altogether historical, for example, when he implies that the non-German population of Upper Silesia is not necessarily Polish but Slav (p. 105). Some deviation from the objective approach is also to be noted in his dis-

[1] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. E. P. Herring and Dr. M. W. Royse.

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cussion of the *Anschluss* question, in which a unanimous desire for the *Anschluss* is subsumed to exist among the Germans and Austrians, whereas, in fact, the question is somewhat of an issue in both Germany and Austria. Nationalist bias is also apparent in his total ignoring of the part played by Ebert in the trying post-war period, the author confining his praise exclusively to President Hindenburg. The booklet is of interest, however, as an expression of the less conservative wing of the National People's party.—M. W. R.

General von Seeckt, the author of *The Future of the German Empire* (Dutton, pp. 188), is one of the strong men of post-war Germany, a man who has done not a little to guide the country through the trying years of revolutionary agitation and political overturn. In this little book he discusses the German problem in the light of his experience and sets forth his views of a sound German polity. There is little in the volume that could be properly called theory, for the author approaches his subject as a realist and man of action. Chapters dealing with economic, social, and ethical problems are followed by a more detailed examination of governmental problems—federalism and particularism, administration, the bureaucracy, and the parliamentary system—and by a discussion of questions of defense and foreign policy. The concluding sections are devoted to the position of the citizen and to an analysis of the executive power. In general, it may be said that Seeckt stresses the claims of nationalism as against the sentimentalities of internationalism, and that he advocates a strong form of government as being best suited to the development and integration of the national forces. There is nothing especially novel about the views advanced, but the book is written with strength and sound appreciation of the realities of German political and economic life. As an antidote to loose idealism, the volume should prove stimulating.—W. L. L.

The *Frankfurter Societäts-druckerei* has just published the third volume of what seems to the reviewer a very stimulating general history of Germany up to the Revolution of 1918, called *Politische Geschichte des Neuen Deutschen Kaiserreiches* (pp. 491), by Johannes Ziekursch. This third volume covers the reign of William II. It is written in a readable style and with pleasing detachment. Vivid characterizations of the most important personalities help the reader

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to form a picture of the course of events. The standpoint of the author is broadly sympathetic to the Republic, not on general grounds, but rather on the ground that it is the adequate political form for modern Germany. As a result, it is not marred by any lack of understanding of the historical significance of the monarchical constitution which preceded the present one. The necessary criticism of the vicissitudes of pre-war German politics and diplomacy are tempered by a strong national sentiment which does not, however, detract from the historical veracity of the book. The volume can be recommended highly to any one interested in a sympathetic account of German internal and external history during recent years.—C. J. F.

Greece Today, by Eliot G. Mears (Stanford University Press, pp. xxii, 336), deals chiefly with the economic and social problems of that country, with special reference to the problems presented by the influx of one million and a half destitute refugees. The author served for a time as American trade commissioner in Greece, and therefore is in a position to write with authority. Students of government will be interested primarily in the chapters on "Public Finance" and "Politics and Foreign Affairs." The author expresses the opinion that "the most remarkable foreign influence in the Hellenistic Commonwealth since the 1918 armistice has been that of the United States of America." This growing prestige is not easy to explain, but may be attributed to "the early encouragement of the Greek cause by President James Monroe, John C. Calhoun, Henry Clay, and Daniel Webster, and to the action of President Wilson in selling the U.S.S. *Mississippi* and the U.S.S. *Idaho* to Greece in 1914, thereby thwarting an almost certain disastrous war by Turkey upon Greece." Also "the influence of Greeks returning home from America, and of Greek students at the American Near Eastern colleges," as well as that of organizations such as the American Red Cross and the Near East Relief, has won many friends for the United States. Professor Mears is an advocate of a federation or alliance of the Balkan states.

Professor George Vernadsky's *A History of Russia* (Yale University Press, pp. 413), first published in 1929, met a real need for an up-to-date and fair-minded text on Russian history. So favorable was the reception accorded to this work by the American public that the publishers have already brought out a second edition, which con-

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tains a new chapter on the foreign and domestic policies of the Soviet Union in 1929, as well as an enlarged bibliography. It is practically impossible for the historian to keep abreast of the rapid progress of events in present-day Russia, and the development of certain tendencies indicated by Professor Vernadsky, such as collectivization, has already outstripped his account. Nevertheless, the revised edition of his book remains the most recent, concise, and complete survey of Russian history in the English language.—V. M. D.

In *Soviet Russia,* published by Little, Brown and Company (pp. x, 453), William Henry Chamberlain presents an extraordinarily satisfying work upon a subject that has been woefully manhandled by many recent writers. This study impresses the reader as well-balanced and as unbiased as could be desired. The historical background is sketched in before the author launches into the "living record" of the varied aspects of the Soviet control. The revolution in education and culture, the tragedy of the Russian intelligentsia, the class state, the main currents in foreign policy, the Communist party, and the struggle for the Russian soul are a few of the topics that are treated with understanding and presented in a style skillful and readable.

Administration et Fonctionnaires; Essai de Doctrine Administrative (Maurice Lamertin, Brussels, pp. 380) is a systematic and well written treatise on the civil service of Belgium, incorporating in addition a large amount of comment on systems elsewhere and on theories and problems of administration generally. The author is himself an experienced Belgian administrative official. Seventeen chapters deal with the institutional bases of administration, central and local; eleven have to do with aspects of personnel; seven discuss administrative methods; and one outlines the principal problems of administrative reform. There is a comprehensive bibliography, in which, however, one misses some important titles, mainly American. The book can be read with profit by any student of comparative government and administration.

Les États Balkaniques, by C. Evelpidi (Rousseau and Cie, Paris, pp. 399), is a comparative study of the political, social, economic, and financial conditions of the nations of eastern Europe. The author takes up briefly and rapidly a vast complex of questions, which makes

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thoroughness of treatment impossible in any one case. For a general survey, the book has something to offer.

British Budgets (Second Series, 1913-14 to 1920-21), by Sir Bernard Mallet and C. Oswald George (Macmillan Co., pp. 410), continues the valuable earlier work by the same authors which included the budgets from 1887-88 to 1912-13. The two volumes provide in convenient form an admirable presentation of this important material in the field of public finance. By far the most interesting aspect of the present volume is the account of war finance. Included in the consideration of each budget are not only the various proposals, but excellent résumés of the ensuing debates and illuminating comments by the authors on the economic principles involved. The concluding chapters bring together the significant parts of the earlier material and consider them from the economist's point of view.

The term Oriental despotism has become a byword in the West. To be sure, not all the personal governments of the East have deserved the unsavory appellation, but there has been abundant justification for the Western prejudice against the kind of arbitrary rule the term suggests. Those who wish to understand its real nature should consult *Mughal Rule in India,* by S. M. Edwardes and H. L. O. Garrett (Oxford University Press, pp. 374). The chapter entitled "Mughal Administration" is especially enlightening.—A. N. H.

Die Bauernbewegung in der Russischen Revolution 1917 (Berlin, Paul Parey, pp. 206), by Professor S. Dubrowski, contains a long and informing chapter dealing with political parties and the peasantry.

INTERNATIONAL LAW AND RELATIONS

Among the most recent Johns Hopkins University Studies in Historical and Political Science is *The International Aspect of the Missionary Movement in China,* by Chao-Kwang Wu (The Johns Hopkins Press, pp. 285). In the Christian missionary movement in China Dr. Wu locates a root of international complications. His objective and legal approach to a situation regarded by the Chinese as an instance of imperialism cloaked in religious garb, and by Westerners as governed solely by treaty stipulations, is timely and clarifying. The author emphasizes his conclusion that the nationalist movement re-

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flects itself most clearly in the tendency of the Chinese to disregard the religious and social aspects of invading Christianity and to view it as an "international political issue." Whatever conventional rights Christian missionaries may legally claim as a result of the toleration articles inserted in treaties since 1842—and these are presented without reserve—the present and future status of foreign religious workers must be influenced by the inevitabilities of rising tides of nationalism and rationalism, China's "new day." Tenacious insistence upon treaty prerogatives has resulted in serious impairment of China's prestige and restriction of her sovereignty. Moreover, fundamental principles of international law concerning the status of resident aliens and state responsibility, applied by the author to the present situation, indicate the legal basis of China's demands for revision of the system of special rights and privileges possessed by mission workers. Dr. Wu believes that if missionary education is to proceed unobstructed by national resentment it must discard its former objectives, too often political, as well as its special treaty privileges, and adopt an attitude more suited to China's new era.—A. E. H.

One of the most subtle aspects of international relations is the activity now referred to officially in Europe as *politique culturelle,* or *Kulturpolitik,* and its relations to those many activities usually springing from private initiative on behalf of international understanding. The treatise which Arnold Bergsträsser has just brought out entitled *Sinn und Grenzen der Verständigung zwischen Nationen* (München: Duncker und Humbolt, pp. 91) will be found unusually stimulating by those interested in these matters. It attempts to draw a line which would mark out a realm within which international understanding may be fruitful. Speaking broadly, this realm is the cultural one in the more limited sense. "Cultural discussion demands that we who undertake to understand a foreign culture experience the full charm of the alien elements of such meeting [of minds] without losing ourselves in it. It also demands from us that we seek the real gain in a stronger development of our own nature." This sentence suggests the reason why the author is of the opinion that "understanding in the cultural realm is something fundamentally different from understanding regarding some external object or purpose; it is also something decidedly different from the simple good-will which is often confounded with it." He rightly emphasizes that in order to understand others,

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we have to understand ourselves. This is an ancient wisdom regarding human relations which has been sadly neglected, when people come to talk about understanding between nations. Bergsträsser's essay is a valuable contribution toward that understanding of international understanding.—C. J. F.

The Little Entente, by Robert Machray (Richard R. Smith, Inc., pp. 394), is an interesting account by an English journalist of the origins, objects, and activities of the Little Entente, a defensive alliance with the primary object of maintaining the *status quo* established by the peace treaties, particularly those of Saint-Germain, Trianon, and Neuilly. Although not a direct apology for the Little Entente, the attitude nevertheless is throughout sympathetic and friendly to the alliance. It is somewhat embarrassing to reconcile the objects of the Little Entente with the new international order, especially with the objects of the League, but the author has apparently satisfied himself that the objects of the Entente are in accord with the spirit and the purpose of the League. In addition to a detailed account of the activities of the Little Entente, the book contains chapters on the pre-war nationality questions and on the dissolution of the Hapsburg Empire, although his conclusions are drawn perhaps too much from anti-Austrian sources.—M. W. R.

Social Psychology of International Conduct, by George Malcolm Stratton (Appleton, pp. 387), is a study of conduct as applied to international relations. The first part is devoted to a discussion of "international behavior," including chapters on the minds of backward and advanced races, on racial prejudice, on race, nation, and nationality, and on the psychological traits underlying their conduct. Part two interprets, from the point of view of the social psychologist, the factors involved in the conduct of nations toward one another. Part three considers the elements necessary in the advancement of international conduct, such advancement, in the author's opinion, being based on constructive education and on the development of the international mind. The nature of the book is that of a text for the use of students in general reading.—M. W. R.

The Evolution of War, by Maurice R. Davie (Yale University Press, pp. 391), is a study of the early stages of the evolution of war, deal-

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ing primarily with primitive society, but with brief analogies to modern customs of war. Several chapters are devoted to the causes of war in primitive society, among such causes being land and booty, women, religion, blood revenge, human sacrifice, head-hunting, and glory. There is another chapter on the mitigation of war, applying chiefly to women and children and later to war messengers. The recognition and observance of neutrals and neutral territory is traced back to primitive times. There is a final chapter on war as a factor in societal evolution. The book contains a large number of appendices, which in fact are brief chapters on native customs of warfare.—M. W. R.

Education and International Relations; a Study of the Social Forces that Determine the Influence of Education (Harvard University Press, pp. 168), by Daniel A. Prescott, of Rutgers University, appears as Volume 14 in Harvard Studies in Education. Political scientists will be specially interested in chapters dealing with national consciousness, class consciousness, the League of Nations, and the interplay of social forces. But the entire volume will repay a reading by anyone interested in public opinion, propaganda, and kindred topics. With a zeal for the subject first kindled by war-time experiences, the author pursued first-hand investigations in Europe through a period of two years. He has produced a book as illuminating as it is readable.

AMERICAN GOVERNMENT

The following are three recent biographies that contain something of interest to the student of politics: *Eugene V. Debs,* by McAlister Coleman (Greenberg, Publisher, pp. ix, 345); *Harvey W. Wiley: An Autobiography* (The Bobbs-Merrill Company, pp. 339); and *Rutherford B. Hayes,* by H. J. Eckenrode (Dodd, Mead and Company, pp. xiii, 363). All of these books are popular in tone and contain a good deal of anecdotal material, some of it amusing, much of it trivial. The reading of certain chapters in these works, however, vitalizes, through an understanding of the human elements involved, certain important events in our political and social history. Wiley's doughty battles for pure food, Hayes in the bitterness of party contest, and Debs' life-long fight for organized labor—such material seems the very warp and woof of politics, and the authors of these biographies spin their yarns in a fascinating way.

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The Democratic Party in Ante-Bellum North Carolina, 1835-1861, by Clarence Clifford Norton, is a publication of the University of North Carolina Press. After briefly describing the economic, social, and political background of the period and the party organization, the author takes up in turn the political issues, the rather acrimonious campaigns, and the exciting elections. The picture is made especially vivid through generous quotations from the partisan press of the time. The period selected for study is of crucial importance because of the great issues then being agitated and because of the developments in party machinery then occurring in North Carolina. The book will undoubtedly prove of value to all who are interested in political parties.

Persons interested in the phenomenal growth of the activities of the national government of the United States will find much of value in Arthur D. Frank's *The Development of the Federal Program of Flood Control on the Mississippi River* (Columbia University Press, pp. 269). The author takes up the subject at the point where the protective work of parishes, counties, and states began to be superseded by national control, and carries it, on political, constitutional, and administrative lines, down to the Jones-Reid Act of 1929, designed to remedy conditions tragically brought to view by the flood of 1927. Engineering technicalities are omitted, and controversies as to general policy are described in full without attempt to dogmatize concerning them. The study is thoroughly documented, and an appendix contains a well arranged bibliography.

John Corbin, in *The Unknown Washington* (Charles Scribner's Sons, pp. x, 454), presents a biography with an original approach. The author is concerned with Washington as a political thinker, and more particularly with his contribution to the framing of the Constitution. This is a matter upon which it is difficult to adduce much direct evidence, and Mr. Corbin proceeds to his task by first attempting to discover the "inward" character of the man and disclose whatever factors explain his attitude toward government. The conclusion is reached that "not only by virtue of titular leadership, but morally, and indeed mentally, he was king-pin of the Federalist System as embodied in the Constitution." Although the author does not make out an altogether convincing case, he has written a rather challenging study, fresh and staunch.

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Henry Clay Warmoth takes up his pen to recount in *War, Politics, and Reconstruction* (Macmillan, pp. xiii, 285) the stormy days that he knew in the Louisiana of the Reconstruction period. The author was governor of the state from 1861 to 1873. The volume is valuable to the scholar chiefly for the correspondence of officials and pertinent excerpts from the press that piece out the narrative, though the reminiscent vein and the wealth of personal detail create a human document sturdy and sincere.

Before and After Prohibition (Macmillan, pp. ix, 131) is written by the United States senator from Maryland, Millard E. Tydings. The author believes that "nothing is more necessary than the substitution of actual fact for the maze of generalities, theories, prejudices, and hopes" now current on the prohibition problem. Accordingly he has assembled a quantity of statistical data and other material from governmental sources. "They comprise the best data obtainable. The writer believes that they prove conclusively that the disadvantages of national prohibition far outweigh its advantages." The states should work out their own problems, Senator Tydings finally concludes—which may prove tidings of great joy to the voters of the Maryland Free State!

Recent Trends in American Municipal Government (International City Managers' Association, pp. 38) is in the form of a symposium edited by Dr. Clarence E. Ridley and contributed to by upwards of a dozen leading American authorities on municipal government and administration. Within the smallest space possible are presented outlines and analyses which, taken together, supply a very useful bird's-eye view of American municipal problems and tendencies. Persons familiar with the recent literature on the subject will find little that is new, but even they will be glad to have the brochure in their files.

POLITICAL THEORY AND MISCELLANEOUS

The Political Quarterly, published in London by Macmillan and Company, made its initial appearance in January, 1930. The editors announce that the function of the journal is "to discuss social and political questions from a progressive point of view; to act as a clearing house of ideas and a medium of constructive thought." On the editorial board are to be found H. J. Laski, A. M. Carr-Saunders, G.

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Lowes Dickinson, J. M. Keynes, T. E. Gregory, Kingsley Martin, J. L. Hammond, W. A. Robson, and Leonard Woolf. The contributions to the issues thus far are authoritative in tone without being pedantic, and with a praiseworthy effort toward acceptable style in presentation. Among those writing, other than the editors, are noted the names of Bertrand Russell, Alfred Zimmern, and G. D. H. Cole.

Liberty, written by Everett Dean Martin and published by W. W. Norton and Company (pp. x, 307), is a stimulating and suggestive book wherein the effort is made to trace the history of a concept. The author believes that there have been two general interpretations of the meaning of liberty. Whether at the Renaissance, the Reformation, or the Glorious Revolution, liberty meant the attaining of certain concrete rights from a definite opposition. As contrasted to this realistic pragmatic attitude, the author calls attention to the natural-right definition of liberty expounded by the romanticists. "The history of liberty in our times is the story of the transition of our modern thought from the first philosophy to the second." The author, however, accepts neither philosophy. Liberty, he believes, is based upon culture: "We have to fight for civilization in ourselves and in our communities. No people can remain free who are not civilized." Mr. Martin, however, is a little vague as to the substantive nature of his criteria. *This Land of Liberty,* by Ernest Sutherland Bates (Harper and Brothers, pp. 383), is a volume that takes for granted the natural right of mankind to liberty and happiness. Agitated by the contradictions to this premise, the author proceeds to enumerate the infringements against freedom in American history. He finds abundant material.—E. P. H.

Three Studies on European Conservatism (Constable & Co., pp. xix, 349), by E. L. Woodward, gives a deeper insight into some of the forces of institutional development on the continent of Europe than many more weighty tomes. The author has succeeded in interpreting those forces of reaction and delay which are so rarely understood by persons unacquainted with the social background of Germany, France, or Italy. By grouping his observations and facts around Metternich, Guizot, and the Catholic Church, he has been able to get unity and focus into his discussion of events, the range of which is only rivaled by their complexity. "Men fight and lose the battle, and the thing they fought for comes about in spite of their defeat. But when it

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comes, it turns out to be not what they meant." The author's judgment is balanced. His reading is extensive without any vain pretense of uncovering new sources. The volume contains essentially reflection and synthesis rather than research. "In uniting these studies I have attempted a commentary rather than a narrative." Grown out of tutorial discussion at Oxford, it is likely to form a stimulating background for such discussion elsewhere, for the fruit of reading it is insight.

The Socialist Tradition in the French Revolution (George Allen & Unwin, pp. 36), by Harold J. Laski, is the only discussion of the subject in English. Professor Laski defines socialism as "the deliberate intervention of the state in the process of production and distribution in order to secure access to their benefits on a consistently wider scale." Now the French Revolution was in some respects so like, in others so unlike, various socialist movements of the last fifty years that an honest attempt to decide just what should be labelled socialist in the French Revolution is just the sort of thing needed in the disciplines we call the social sciences. Professor Laski has used the best French sources to make a provocative and useful pamphlet.—C. B.

The Imperialist War; The Struggle Against Social-Chauvinism and Social Pacifism, 1914-1915 (International Publishers, pp. 496) is a valuable collection of Lenin's writings during the early years of the World War. Although most of these are reprints of pamphlets which had already appeared in English, there is also a considerable number of new translations of speeches and letters. The essay "Socialism and War" was written by Lenin and Zinoviev in Geneva in August, 1915, and published in German, French, and Norwegian for distribution through the belligerent countries. The first chapter of this essay gives a Marxian interpretation to the causes and nature of war. The remaining three chapters are devoted to Russia and the revolutionary movements, including the Third International. The book is carefully edited, with explanatory biographical notes and with a list of documents made up of resolutions and manifestoes of the more important conferences held during that period. Not only is the collection important for an understanding of the activities of the revolutionary international groups during the first half of the war, but it

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shows clearly how intimately Lenin was associated with the various programs of the different groups and the extent to which he really dominated the communist movement.—M. W. R.

Staat und Gesellschaft in Amerika; Zur Soziologie des Amerikanischen Kapitalismus, by Charlotte Lütkens (Tübingen: J. C. B. Mohr and Paul Siebeck, pp. 208), as indicated by the sub-title, attempts to analyze the peculiar aspects of American capitalism. Its problems and the author's approach to it are based upon the general notions of Karl Marx, as they have been developed and modified up to the present time, particularly through the sociological analyses of Max Weber. In spite of various refinements, they continue to center around a pragmatic, if not materialistic, interpretation of historical evolution. From this point of view, it has always been a puzzle why the United States, which seems so obviously in a highly advanced stage of capitalistic development, should show such a weak labor movement and only rudimentary traces of socialism. Readers interested in these problems will recall Werner Sombart's sensational little tract in which he attempted to explain this phenomenon. Charlotte Lütkens, confronted with the same puzzle, develops the highly suggestive hypothesis that what we find in the United States is not in fact "*Hochkapitalismus,*" but a complex pseudo-form of capitalism, combining late phases of capitalistic development in technological aspects with earlier phases in social and political respects. Her discussion is built upon an analysis of economic, political, social, and cultural phenomena. She emphasizes how this opposition has become politically stratified through the federal organization of the United States. The power of the Supreme Court under the Constitution is viewed critically. The predominant political thought in the United States is liberalism, but the author fails to make clear what she understands by liberalism. It seems to have several meanings, depending upon the antithesis in connection with which it is used. What seems of peculiar significance to the author is the absence of organized bureaucracy in the sense in which Weber has used that notion. It is a point of considerable importance no doubt, but in the opinion of the reviewer it has been overstated in this essay, due to the fact that the vast bureaucratic bodies contained in the public utilities have not been taken into consideration sufficiently. Significant facts are often exaggerated in their bearing upon a particular argument, and errors and omissions are

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not infrequent, but they are minor when one considers the essay as a whole.—C. J. F.

William Spence Robertson's *The Life of Miranda* (2 vols., University of North Carolina Press, p. 326, 306) presents a well documented account of the life of one of the most interesting of the South American patriots, who, through his wanderings in the service of many causes in the last part of the eighteenth and the first part of the nineteenth century, met a remarkable number of the leading figures in world politics of his time. The narrative is based largely on the papers of the third Lord Bathhurst, which have only recently been made available, but the author's researches have taken him also to the public libraries and archives of Great Britain, France, Spain, and America. As a life story, the volumes have an unusual interest because of Miranda's habit of preserving correspondence and other papers, over fifty volumes of which have been at the biographer's disposal. Indeed the study becomes much more than one of the life of its hero, for his detailed accounts of himself, those whom he met, and the conditions under which he and they lived give a picture of the life of his times of unusual interest. These biographical volumes stand out in strong contrast to many of the more impressionistic sort which have recently appeared in such large numbers. The documentation and bibliography are in the best standards of scholarship.—C. L. J.

Communist and Coöperative Colonies, by Charles Gide, has been translated from the French by Ernest F. Row and published by Thomas Y. Crowell Company (pp. 222). The author describes in a very delightful fashion the many communitarian societies, most of which were established during the nineteenth century, and the greater number in the New World. He devotes some time to primitive communities and discusses the Incas, monastic communities, and the Jesuit republics of Paraguay. The Shakers, the Mormons, the Owenites, together with other groups of enthusiasts, pass in fantastic array. *The Last Paradise,* by Hickman Powell (Jonathan Cape and Harrison Smith, pp. xix, 292), is a colorful account of a utopia that works and plays with great felicity. The book depicts life on Bali, an island near Java. Reformers might take a leaf from this volume.

Edited by D. Ryazanov and issued by the International Publishers, *Fundamental Problems of Marxism* (pp. xiv, 145), by G. Plekhanov,

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is available in a new edition. This work is a systematic exposition of dialectical materialism, and is concerned mainly with the philosophical and historical aspects of scientific socialism. It first appeared in 1908. Included in the present edition are: "Sudden Changes in Nature and History" and "Dialectic and Logic," likewise by Plekhanov.

The Greek City and Its Institutions (pp. xx, 418), by G. Glotz, professor of Greek history at the University of Paris, has been translated by N. Mallinson and published in the Alfred A. Knopf series on *The History of Civilization* edited by C. K. Ogden. The book traces in erudite fashion the evolution of the Πόλις from the Homeric city through the storm and stress of tyranny, oligarchy, and democracy to the ultimate decline of the city-state. The work is more than a recital of the historic development of the Greek city, for, as Henri Berr points out in his excellent introduction to the volume, "it formulates and suggests the general ideas which such a subject admits of, and leads on to considerations of a sociological bearing."

Nationalism, Politics, and Economics, by Edward Hatton (P. S. King & Son, Ltd., pp. 145), is a short but interesting account of the effect of nationalism upon economics, with special emphasis on the economic problems confronting England. The tariff question is considered at length, including its effect upon British taxation and currency and on foreign markets. The final chapter is devoted to economic practices in America. The author's main thesis is that national consciousness becomes uneconomic so long as it is chauvinistic and isolationary; if moderate, however, nationalism takes on a positive economic significance.—M. W. R.

British Opinion and the American Revolution (pp. viii, 308), by Dora Mae Clark, is a publication of the Yale University Press. Basing her research upon an extensive examination of manuscripts, pamphlets, newspapers and magazines, printed correspondence, and memoirs, together with other contemporary publications, the author depicts in vivid fashion the state of public opinion in Great Britain from 1765 to 1783. After a period of salutary neglect, the British merchant and farmer suddenly discovered that discontent in America meant economic disturbance at home. An interest was aroused and opinions were formed upon a subject that had not attracted much

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attention before. In demonstrating the significance of the British state of mind at this time, Dr. Clark has made an important contribution to the literature of the American Revolution.

The Intendant System in Spanish America, by Lillian Estelle Fisher (University of California Press, pp. 385), contains an excellent essay on the significance of the intendant system in the Spanish colonies introduced tardily after the Seven Years War to meet the new conditions partly created by and partly developed during the preceding two hundred and fifty years. The modifications in government were such as had in substance been tried in Spain itself, and were there modelled after innovations used in France from the time of Richelieu. After 1748, a sustained program of reform was adopted in the colonies, which, though never adequate for the far-flung empire, causes the later period of Spanish control to bear favorable contrast with the restrictive one which preceded it. The last two-thirds of the book gives a translation of the chief ordinances establishing the intendant system.—C. L. J.

The report of the New York State Commission on Old Age Security has been published as Legislative Document No. 67 (1930). The report is 692 pages in length. Part I deals with economic and administrative problems and includes chapters on the aged in the state of New York, the extent of old age need, human depreciation, income and employment, public and private pension systems, savings and insurance, old age assistance legislation in other states, experience under American legislation, foreign laws and experience, and reports of commissions in other states. Part II treats of the relief of the aged in New York State. Luther Gulick, director of the National Institute of Public Administration, was executive secretary and director of research for the commission. Copies of the report can be obtained from Mr. Gerald Casey, clerk of the commission, Albany, New York.

In *Social Sciences in the Balkans and in Turkey* (University of California Press, pp. 133), Professor Robert J. Kerner surveys the resources for study and research in social science subjects in Yugoslavia, Rumania, Bulgaria, Greece, and Turkey. Universities, libraries, and academies and other learned societies are enumerated and appraised, and some attention is given to periodical and other pub-

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lications. The generally unfavorable situation brought to view is ascribed mainly to low salaries, compelling university professors to seek outside employment; lack of recent books and periodicals, especially from English-speaking countries; and lack of travel and of intermingling of scholars of the different countries.

Current Research in Law for the Year 1929-1930 (Johns Hopkins Univ. Press, pp. 298) was compiled by Elizabeth S. Iddings from materials assembled by means of a survey conducted by the Institute of Law at the Johns Hopkins University. It consists of a classified enumeration of research projects, with indication in each case of the stage of progress attained. Upwards of eighty pages are devoted to lists of studies undertaken in various divisions of the broad field of government.

In *Philippe Snowden; L'Homme et sa Politique financière* (Felix Alcan, pp. 124), André Andréadès, a professor in the University of Athens and a well-known writer on financial topics, has contributed a brief but useful study of Great Britain's present Chancellor of the Exchequer and his policies. The fullest chapters are those having to do with the budgets of 1924 and 1930, but all phases of Mr. Snowden's long and significant public career are touched upon.

Recent American History, by Lester Burrell Shippee (Macmillan, pp. ix, 590), has been issued in a revised edition which brings the account down to the spring of 1930. Other slight changes appear in the present text which further distinguish it from the first edition of six years ago. The history now extends from "The South and Reconstruction" to "The Machine Age" of today.

A very comprehensive check list which will have value for students of state and local government is the *Bibliography of Virginia History Since 1865* (pp. 900) compiled by Lester J. Cappon and issued as Monograph No. 5 in the publications of the University of Virginia Institute for Research in the Social Sciences.

The Background of Swedish Emigration to the United States (University of Minnesota Press, pp. 272), by John S. Lindberg, deals

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mainly with economic and sociological matters, but touches also on the political effects of a great population movement.

A Bibliography of the Monroe Doctrine, 1919-1929 (London School of Economics, pp. 39) is a complete but unannotated list prepared by Professor Phillips Bradley, and covering books, articles, and documents in all languages.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CLARENCE A. BERDAHL
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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